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**Datasheet for the decision
of 9 July 2014**

Case Number: T 1359/11 - 3.2.03

Application Number: 05733555.6

Publication Number: 1738120

IPC: F25D23/06

Language of the proceedings: EN

Title of invention:

MODULAR REFRIGERATION AND/OR FREEZER APPLIANCE

Applicant:

WHIRLPOOL CORPORATION

Headword:

Relevant legal provisions:

EPC Art. 108 sentence 3
EPC R. 99(2), 101(1)
RPBA Art. 12(2) sentence 1

Keyword:

Admissibility of appeal - (no)
Statement of grounds of appeal - party's complete case (no)

Decisions cited:

T 0162/97

Catchword:



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 1359/11 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 9 July 2014

Appellant: WHIRLPOOL CORPORATION
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Michigan 49022 (US)

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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 December
2010 refusing European patent application No.
05733555.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: U. Krause
Members: C. Donnelly
I. Beckedorf

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division, dated 16 December 2010, refusing European patent application No. 05733555.6 because the subject matter of claim 1 lacked clarity and did not comply with the requirements of Article 84 EPC (see points 7 and 8 of the decision).
- II. The applicant (hereinafter: the "appellant") filed a notice of appeal together with the grounds in due time.

The appellant requests that the decision under appeal be set aside and (implicitly) that a patent be granted on the basis of claim 1 filed with the appeal.

Although no request for oral proceedings was made the Board summoned to oral proceedings since it wished to give the appellant the opportunity to present arguments concerning doubts as to the admissibility of the appeal as laid out in the annex to the summons.

By letter of 7 July 2014 the appellant stated that it would not attend the oral proceedings before the Board scheduled for 8 August 2014 and indicated that it had "lost interest in prosecuting the above application".

- III. Claim 1 as filed with the grounds reads:

"A modular refrigeration and/or freezer appliance comprising at least one U-shaped module (16) to define together with closure walls (40,41) and at least one frontal door (27), a thermally insulated compartment, said U-shaped module *being installable according to a vertical direction established by an axis of a channel defined by the U-shaped module (16)*, characterized in

that, in correspondence with said closure walls (40,41), are present reversible connection means (6a, 6b,30) for connecting the U-shaped modules (16) *with at least one closure wall (40,41) or for connecting said U-shaped module (16) and other modular components (2) of the refrigeration appliance.*"

Claim 1 as rejected by the examining division reads:

"A modular refrigeration and/or freezer appliance comprising at least one U-shaped module (16) *which can be fitted to other modules,* to define together with closure walls and at least one frontal door, a thermally insulated compartment, characterised in that said U-shaped module (16) *is installable vertically,* there being provided, in correspondence with said closure walls (40,41), reversible connection means (6a, 6b,30) between the U-shaped modules (16) or between said U-shaped module and other modular components (2) of the refrigeration appliance, *said connection means (6a,6b,30) comprising rectilinear profiled guides (6a) and corresponding counter-guides(6a).*"

The main differences between the claims are indicated in italics.

Reasons for the Decision

1. Admissibility of the appeal
 - 1.1 Although the appellant has indicated that it "has lost interest in prosecuting" the application" this cannot be construed as an unequivocal withdrawal of the appeal, thus, the Board must still decide on its admissibility.
 - 1.2 It is established case law that the appeal procedure is not a continuation of the examining procedure, but constitutes a distinct procedure in which the onus is upon the appellant to argue why the impugned decision should be set aside. It is not the role of the board to make the appellant's case for it, but rather to judge whether the case it presents is convincing. This is reflected in Article 12(2) RPBA which states:

"the statement of the grounds of appeal and the reply shall contain a party's complete case. They shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld...."

Article 108, third sentence, requires that:

"Within four months of of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations."

The relevant part of the Implementing Regulations is set out in Rule 99(2) which states:

"In the statement of the grounds of appeal the appellant shall indicate the reasons for setting aside

the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based."

Taken together these regulations leave no doubt that in its statement of the grounds of appeal the appellant must address all the reasons for refusing the application given by the examining division in its decision of 16 December 2010.

- 1.3 In its decision, the examining division held that the subject-matter of claim 1 as filed with letter of 22 June 2010 lacked clarity within the meaning of Article 84 EPC.

In detail the examining division argued that the term:

"which can be fitted to other modules to define, together with closure walls and at least one frontal door, a thermally insulated compartment"

is unclear since not only does the use of the word "can" render the features to which it relates optional, but also the expression "to define, together with closure walls and at least one frontal door", leaves doubts as to whether the walls and the door form part of the claimed appliance. Further, the word "installable" merely means that the U-shaped module can be installed which renders the corresponding features of the U-shaped module optional. Since the closure walls and the other modules may not form part of the claimed appliance, the reference to these elements in the characterising portion of the claim also leads to a lack of clarity (see point 7 of the impugned decision).

For these reasons the examining division concluded that(see point 8 of the impugned decision):

"Therefore, the application must be refused because the subject-matter of claim 1 does not comply with the requirements of Article 84 EPC."

Additional remarks concerning novelty **but "not forming part of the decision"** were made in section 9.

1.4 The grounds of appeal, filed simultaneously with the notice of appeal, comprise three pages of reasoning, amended pages 2 and 2a of the description and amended claims 1 and 2. The appellant's reasoning is set out in three sections: "Grounds for amendments", "Novelty" and "Inventive step". However, the question of clarity is not even mentioned let alone discussed.

1.5 It is also established case law of the Boards of Appeal that the examination as to whether the requirements of Article 108, third sentence EPC are met has to be made on the basis of the contents of both the statement of grounds of appeal and of the decision under appeal (see T162/97). As explained above the actual text of the appellant's statement of grounds is silent with respect to clarity and Article 84. It must therefore be seen if the amendments made to claim 1 are of such a nature that there can be no doubt they are in direct response to indications given in the impugned decision and evidently overcome the clarity objections without additional explanation being necessary.

In the board's view this is not the case; the amendments are neither a direct response to indications given in the impugned decision nor do they unambiguously and directly resolve the clarity

objections raised. On the contrary, they appear to raise yet more problems in this respect. The examining division had specifically objected to the use of the term "installable", however, this word still appears in the amended claim. Further, although the term "can" has been deleted it is still not clear what components of the modular refrigeration and/or freezer appliance are covered by the claim. Indeed, the comments in the section of the grounds entitled "Inventive step" seem to indicate that the appellant itself is not quite sure what the object of the claim is since reference is made to : "The module (2,16) of the present invention, which is a thermally insulated compartment..."

1.6 In conclusion, the statement of the grounds of appeal fails to address the reasons given in the impugned decision for the refusal of the application. Further, the amendments made to claim 1 filed with the grounds in combination with the indications given in the impugned decision are not of a nature to render such an explanation unnecessary.

1.7 Thus, the statement of the grounds of appeal does not meet the requirements of Article 108 and Rule 99(2) EPC. Since the period for filing a (complete) statement of grounds of appeal under Article 108 EPC has expired, the appeal is rejected as inadmissible in accordance with Rule 101(1) EPC

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated