

**Internal distribution code:**

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

**Datasheet for the decision  
of 10 February 2015**

**Case Number:** T 1811/12 - 3.2.03

**Application Number:** 03732824.2

**Publication Number:** 1520136

**IPC:** F24C3/08

**Language of the proceedings:** EN

**Title of invention:**

COOKING HOBS INCLUDING COOKING ELEMENTS OF PARTICULAR  
CONSTITUTION

**Patent Proprietor:**

Indesit Company S.p.A.

**Opponent:**

Electrolux Rothenburg GmbH Factory and Development

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2), 54(1), 56, 114(2)  
RPBA Art. 12(4)

**Keyword:**

Main request: allowable  
Prior art submitted with the grounds of appeal: not admitted

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 1811/12 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 10 February 2015**

**Appellant:** Electrolux Rothenburg GmbH Factory and  
(Opponent) Development  
Fürther Strasse 246  
90429 Nürnberg (DE)

**Representative:** Schröer, Gernot H.  
Meissner, Bolte & Partner GbR  
Bankgasse 3  
90402 Nürnberg (DE)

**Respondent:** Indesit Company S.p.A.  
(Patent Proprietor) Viale Aristide Merloni, 47  
60044 Fabriano (AN) (IT)

**Representative:** Dini, Roberto  
Metroconsult S.r.l.  
Via Sestriere 100  
10060 None (TO) (IT)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
8 June 2012 concerning maintenance of the  
European Patent No. 1520136 in amended form.**

**Composition of the Board:**

**Chairman** G. Ashley  
**Members:** Y. Jest  
M. Blasi

## Summary of Facts and Submissions

I. By its decision posted on 8 June 2012 the opposition division decided that European patent Nr. 1 520136 could be maintained in amended form on the basis of claims 1 to 6 of the request filed during oral proceedings held on 22 March 2012. In its interlocutory decision, the opposition division held that the grounds of added subject-matter not originally disclosed and of lack of novelty or inventive step raised by the opponent against the claimed subject-matter did not prejudice the maintenance of the patent.

II. The opponent lodged an appeal against this interlocutory decision and paid the appeal fees on 8 August 2012. The statement of the grounds of appeal was submitted on 5 October 2012.

III. The parties made the following requests:

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

The proprietor (respondent) requested that the appeal be dismissed and the patent be maintained in amended form on the basis of the set of claims considered as allowable by the opposition division (main request) or, subsidiarily, that the decision under appeal be set aside and the patent be maintained in an amended form on the basis of one of the auxiliary requests 1 to 3, all filed with its letter dated 9 January 2015.

IV. Independent claim 1 of the main request has the following wording (*with added references A to L as introduced by the respondent*):

- A) "Built-in type cooking hob, particularly apt to be easily and conveniently mounted in a single unit in suitable openings of kitchen furniture,
  - B) comprising at least one cooking element (1) of a type apt to be assembled with the cooking hob (10) in housing holes (10A)
  - C) present in said cooking hob (10), in order to realise functional and stylistic changes to the cooking hob (10) in a simple and economical manner,
  - D) said cooking element (1) being made for being modular and able to be inserted in a predetermined hole (10A) of said cooking hob (10) and
  - E) providing first means which comprise a cover (2) fitted to close the external surface of said cooking hob (10), as a support for second means (3) to generate cooking heat and to contain any possible liquids or wastes that commonly drop onto a cooking hob (10),
  - F) said cover (2) comprising an external edge (2B) that allows the coupling of said cover (2) with the cooking hob (10),
  - G) wherein, in order to realise efficient and complete modularity of said cooking element (1), said cover (2) comprises:
  - H) third means for the stable attachment of said second means (3) to said cover (2);
  - I) seats (2S) near the bottom of said cover (2) onto which the arms of a pot-holder (9) abutting lodge,
  - J) wherein said external edge (2B) is flat and suited for the stable attachment, through fixing means, of said cover (2) to the lower surface of said cooking hob (10) aligned with said housing hole (10A),
- or**
- L) wherein said external edge (2B) is folded over slightly in a downwards direction and is apt to act as a stable support on said cooking hob (10)."

V. State of the art

The following documents cited in the disputed decision, were referred to, among others, by the appellant in its grounds of appeal:

E1 DE-A- 31 49 179  
E2 DE-A- 30 03 830  
E5 US-A- 5 186 158  
E8 US-A- 3 877 865  
E10 US-A- 5 628 302

The following additional documents were referred to by the appellant for the first time in the grounds of appeal:

E13 DE-U- 299 10 789  
E14 JP-A- 62-272020

VI. The arguments presented by the appellant against the main request can be summarised as follows:

a) Article 123(2) EPC

Claim 1 of the main request infringed Article 123(2) EPC since features D and F of claim 1 were neither disclosed nor unambiguously derivable from the originally filed application published as WO-A-2004/003435 (WO).

Feature D in conjunction with feature B covered an embodiment having a single cooking element, which defined an undisclosed generalisation of the modular cooking hob comprising three gas burners.

The undisclosed term "coupling" of feature F was broader than the originally disclosed term "attaching"

and could not be realised by features J and L, which had been incorporated into claim 1.

b) Admissibility of E13 and E14

During the oral proceedings held before the opposition division features J and L were incorporated into claim 1. Thus a supplementary search focusing on the added features was required, which resulted in documents E13 and E14 being submitted with the grounds of appeal. E13 clearly disclosed all the features of claim 1, in particular features H, J and L, and hence was *prima facie* relevant when considering novelty, while E14 disclosed features J and L and was *prima facie* relevant for the issue of inventive step.

c) Novelty

The claimed subject-matter lacked novelty as compared to E1, E2, E5, and especially E8, E10 and E13.

Concerning E8, Tabs 50 maintain the burner 30 in a predetermined centered position with respect to the cover 16 and thus allow a stable attachment in X and Y directions. Additionally, the burner is supported by a mounting bracket 32. Feature H is therefore disclosed in E8. Feature I is also known from E8, since the rim 20 onto which the pot-holder 22 rested is vertically aligned with the lowest point of the cover 16 and thus located radially near the bottom of the cover.

The modular cooking element shown in E10 comprises a heat generating venturi 20 attached to a fixture 34, itself attached to all the components of the system and thus also to the cover 14 (features G and H). The bottom of the flat cover 14 in E10 can be considered as

the cover itself; the sealing ring 16, which formed the seat for the pot-holder 24, is thus near the bottom, in accordance with feature I. Alternatively, feature I is fulfilled by the protrusion 58 of the grate 24 being lodged in the indexing indentation 56 of the cover 14. The cover in figure 2 shows a fold down, radially inside of the portion enclosed within the sealing ring 16 (feature L); the flat edge of the cover 14 could also be attached onto the top 12 by suitable fixing means (feature J).

d) Inventive step

If the claimed cooking hob was considered to differ from the state of the art disclosed in E8 or E10 by features H and I, two technical problems would have to be defined because features H and I lacked any functional interrelationship. The two separate objective problems were firstly, improving the attachment of the burner to the cover (feature H) and secondly, improving the positioning of the pot-holder (feature I).

The person skilled in the art would have solved these problems on the basis of general knowledge without inventive activity, resulting in the application of the technical means as set out in features H and I to the device of E8 or E10. The skilled person could have also been prompted by E5 or E14. The basis plate 10 of E5 comprised seats for the grate 26 and provided a support for attaching the burner.

The claimed subject-matter was also rendered obvious by the combination of E8 and E10. The skilled person is given incentive from E10 to provide seats for the pot-holder near the bottom of the cover and for attaching the burner to the latter.



VII. The respondent submitted essentially the following arguments:

a) Article 123(2) EPC

As acknowledged by the opposition division in its interlocutory decision, both features D and F of claim 1 of the main request were disclosed in the originally filed application WO-A-2004/003435 (WO).

The requirements of Article 123(2) EPC were thus met.

b) Admissibility of E13 and E14

Features J and L were added to claim 1 on file during the oral proceedings held before the opposition division in order to meet an objection pursuant to Article 123(2) EPC. There was thus no reason for the late submission of E13 and E14. Further, the disclosure of E13 and E14 was *prima facie* not relevant. Therefore E13 and E14 should not be admitted into the proceedings.

c) Novelty

The claimed subject-matter was novel since none of the cited prior art disclosed in combination features H and I of claim 1.

In E8 the burner was supported by a bracket and not by the cover. In E10 the cover lacked attaching means for the burner venturi.

The seats for the pot-holder as provided in E8 and E10 were not located near the bottom of the cover.

d) Inventive step

Features H and I in combination provided a synergic effect that contributed to the modularity of the cooking hob, as disclosed in the disputed patent. The skilled person had no reason to alter the devices known from E8 or E10 on the sole basis of general knowledge. A combination of E8 and E10, each of which fail to disclose features H and I of claim 1, could not lead obviously to the claimed embodiment.

No teaching for rendering the device of E8 or E10 more flexible/modular could be found in E5 either, since it lacked a cover within the meaning of the patent. Hence, the claimed subject-matter involved an inventive step.

VIII. At the end of the oral proceedings on 10 February 2015 the board pronounced its decision.

### **Reasons for the Decision**

1. Article 123(2) EPC - Main request

1.1 Claim 1

Features D and F are unambiguously derivable from the application WO as a whole, and thus disclosed therein.

Claim 1 as originally filed already contained the option of a single cooking element (see page 6, line 2 of WO).

Feature D of claim 1 on file does therefore not constitute an undisclosed generalisation of the preferred mode of realisation of the invention having three gas burners.

It is not disputed that the term "coupling" is a

generalisation of "attaching". However, the scope of feature F in claim 1 of the main request is not to be considered by itself, but in conjunction with features J and L added to claim 1. Features J and L limit the scope of the concept of "coupling" to the alternative modes of realisation for coupling the cover at its external edges to the cooking hob, both alternatives being explicitly disclosed in the application. Coupling in the context of a flat edge (see claim 7 as filed and granted, and figure 2) is performed by any suitable attaching means available at the filing date (feature J). Whereas coupling is performed according to feature L by the folded form of the external edge of the cover, which allows a stable support as illustrated in figure 1 (see also claim 8 as filed and granted).

## 1.2 Dependent claims - Description

Dependent claims 2 to 6 correspond to claims 2 to 6 of the patent as granted. The description has been adapted to the subject-matter of the invention as defined in claim 1 of the main request.

1.3 The requirements of Article 123(2) EPC are thus fulfilled by the patent as amended according to the main request.

## 2. Novelty - Main request

### 2.1 Compared to E8

The built-in type cooking hob of E8 (see especially the figures and column 1, lines 51 to 62) comprises a cooking element 30 adapted for insertion into a housing hole 14 of the cooking hob 12, thus allowing functional and stylistic changes to the cooking hob. The cooking

hob further comprises a cover (pan 16), which provides a support for a burner 30 and which, when fitted, closes the external surface of the cooking hob 12 and acts as a container for possible liquids or wastes that may drop onto the cooking hob. The external edge (rim 20) of the cover 16, which is folded over slightly downwards, allows a stable coupling of the cover with the cooking hob.

Features A to G and L of claim 1 are thus disclosed in E8.

The appellant's arguments as to why features H and I were also known from E8 are not convincing. In this respect, the board confirms, as set out below, the reasons given in the contested decision.

The cover 16 of E8 lacks any means for the stable attachment of the burner 30 as required by feature H. In E8 a separate element, namely the mounting bracket 32, is required for securing the burner, see especially column 1, lines 59 to 61. In addition, the tabs 50, which are provided at the radially inner edge/opening 28 of the cover 16, do not provide a stable attachment of the burner 30 within opening 28. The purpose of tabs 50 is solely to prevent off-centering of the burner 30 ( see column 2, lines 20 to 25 and 52 to 65). A centering function is not comparable with a stable attachment function.

Concerning feature I of claim 1, the board considers that the peripheric rim 20 of the cover 16, which defines the seat for the ring 24 of the grate 22 (see column 1, lines 55 to 58), is not located near the bottom of said cover. The term "near" is to be construed in the light of the disclosure of the invention, that is, it should be adjacent to or next to the lower part of sidewall 18 of E8 and in the vicinity of its outer edge portion. Rim 20, which is remote from

the bottom of the cover in axial direction, can not be considered as being located "near to the bottom of the cover".

The subject-matter of claim 1 thus differs from E8 at least by features H and I.

## 2.2 Compared to E10

It is undisputed that features A to F are disclosed in E10, which relates to a built-in type range top 12 (cooking hob), and which comprises a cooking element (burner) 10 for insertion into a hole 32 present in the cooking hob 12. The arrangement allows functional and stylistic changes to be made to the cooking hob.

The burner 10 has a cover (burner pan 14), which closes the external surface of said cooking hob 12, supports a burner base 18 and a burner head 22, and which can contain liquids or wastes that may drop.

The cover 14 comprises an external edge 14a, 60, which allows coupling of the cover 14 with the cooking hob 12.

The arguments presented by the appellant as to the lack of novelty of features H and I are based on an unduly broad interpretation of some of the terms used in E10.

Regarding feature H, the burner, i.e. venturi 20, is not attached to the cover 14 but to a separate fixture plate 34, which is itself fastened to a cross-support member 35 in the burner box interior (figure 1, column 2, lines 51 to 55). The appellant argued that when securing the venturi 20 into the fixture 34, several components of the hob, including the cover (burner pan 14), were maintained together in stable position, and that the burner was therefore at least indirectly

attached to the cover. This interpretation of feature H goes far beyond of what the skilled person would normally understand by the requirement in claim 1 of the cover itself to be provided with a means for attaching the burner.

The underside seating and seal-engaging surface 80 of the base 79 of the pot-holder 24 of E10 rests on the sealing ring 16 (column 4, lines 4 to 8) and not, as required by feature I, onto the cover (burner pan) 14. Feature I is not fulfilled by the protrusion 58 of the grate 24 either (figure 2). The engagement of the protrusion 58 with the indentation 56 of the burner pan 14 serves only for aligning the grate into a proper position (column 3, lines 3 to 6; column 4, lines 4 to 36), i.e. for avoiding rotation of the grate once it rests on the sealing ring 16.

The subject-matter of claim 1 thus differs from E10 at least by features H and I.

### 2.3 Novelty compared to E1, E2 and E5

The claimed cooking hob is not anticipated by any one of documents E1, E2 and E5.

The device disclosed in E1 concerns a moulded preformed cooking hob comprising a plurality of gas burners (page 4, last paragraph), but having a single cover 1. The apparatus of E1 is thus based on a different concept, and does not disclose all the features B to L in combination.

Similar considerations apply to E2, in which the single cover 8 is common to several heat generating means (2 to 5), and which is inserted via a support element 10 into a side wall 9.

Concerning E5, the top partition 10 defines a preformed element comprising a plurality of openings 24 for receiving burners 18. Therefore the top partition 10 corresponds to the cooking hob of the claimed invention. A cover as defined in claim 1 is missing in E5, hence the combination of features A to L is not anticipated by E5.

2.4 E13, submitted with the grounds of appeal

2.4.1 The question whether document E3 submitted by the appellant for demonstrating a lack of novelty of the claimed device is to be considered in the appeal proceedings is to be examined in the light of Article 114 EPC and Article 12(4) RPBA. In this context, the board considered the following aspects as being relevant:

(a) Claim 1 of the main request corresponds to claim 1 which was found allowable by the opposition division, and which consists of the combination of granted claims 1 and 7 (feature J) or claims 1 and 8 (feature L), all of which were expressly objected to by the appellant in the notice of opposition dated 3 December 2007 (see page 10). Moreover, auxiliary requests with a claim 1 directed to either combination (granted claims 1 and 7, and granted claims 1 and 8) were filed by the respondent in preparation of the oral proceedings before the opposition division (auxiliary request 2 and auxiliary request 6), and claim 1 of the main request as found allowable by the opposition division is based on the combination of these two auxiliary requests in the form of providing two alternatives in claim 1 using the "or" connector for features J and L.

Hence, there was no objective reason for performing an additional search allegedly in response to the grounds of the contested decision.

- (b) Various documents (E1, E2, E5, E8 and E10) had been cited by the opponent/appellant for demonstrating a lack of novelty of the claimed subject-matter. The newly cited document E13 is *prima facie* not relevant, i.e. no more relevant with respect to novelty than each of the originally cited state of the art. In particular, features D, H and I of claim 1 cannot *prima facie* be derived from E13. The burner 26 is not inserted into but merely lies on the surface 44 of plate 36, as shown in figure 2 of E13. There is no clear and unambiguous disclosure of a means provided in the cover for attaching the burner and of seats for the pot-holder near the bottom of a cover.

2.4.2 Taking account of these observations, the board decided not to take document E13 into consideration in the appeal proceedings.

2.5 In conclusion, the subject-matter of claim 1 of the main request is novel and fulfils the requirements of Articles 52(1) and 54(1) EPC.

3. Inventive step - Main request

3.1 Closest prior art

It follows from the comparative analysis made above with regard to the issue of novelty that the closest prior art is represented by either E8 or E10. The state of the art according to E8 or E10 discloses essentially the same features of claim 1 of the main



request and comes closer to the invention than any other piece of evidence cited by the appellant. As set out above, the claimed subject-matter differs from E8 or E10 at least by features H and I of claim 1.

### 3.2 Technical problem

3.2.1 The appellant argued that the distinguishing features H and I defined a juxtaposition of technical means lacking a functional interrelationship and that two separate partial problems were therefore to be defined, one dealing with strengthening the attachment of the burner, the other with improving the support of the pot-holder.

3.2.2 The board does not share this view for the following reasons:

The major aim of the invention, as defined in paragraph [0011] of the contested patent, is to provide cooking hobs characterised by a greater versatility in use, design and capacity. The solution suggested by the patent concentrates on the provision of a cover for closing an opening in the hob and for supporting the heating element. According to the invention, said cover needs several special features taken in combination in order to achieve the desired increase of versatility or modularity of the system. Among the essential features of the cover, the claim defines a third means for attaching the heating element and the provision of seats for the pot-holder near the bottom of the cover.

It is therefore clear to the person skilled in the art, that features H and I are functionally interrelated for providing, in combination, the solution to the

technical problem of enhancing the flexibility in use of a cooking hob.

3.2.3 The objective problem to be derived from the combination of features therefore cannot consist of partial problems for each distinguishing feature, but must be in agreement with the aim defined in the patent, namely to improve the versatility/modularity of the cooking hob system.

3.3 No obvious solution

3.3.1 The appellant has not provided arguments as to why the person skilled in the art would have amended the cooking hob known from E8 or E10 by incorporating features H and I with the aim of improving flexibility of the system.

In the absence of a clear demonstration following the problem-solution approach, the board can only conclude that the distinguishing features H and I were not obviously derivable in combination, and that the claimed subject-matter therefore involves an inventive step in the meaning of Article 56 EPC.

3.3.2 But even in the case where one could envisage two distinct partial problems issuing from features H and I, as argued by the appellant, there is no clear evidence that the skilled person would have arrived at the claimed device.

Starting from E8 or E10 the skilled person would have no incentive on the basis of its general knowledge or of the disclosure of E5 to alter the attachment of the heating element and the location of the seats for the pot-holder of the device shown in E8 or E10, since they appear to be satisfactory in use.

A combination of E8 with E10 would not obviously result in the claimed cooking hob because they both lack features H and I of claim 1.

3.3.3 E14, submitted with the grounds of appeal

In the absence of a translation into one of the official languages, the teaching and the *prima facie* relevance of Japanese document E14 is limited to the information derivable from the abstract and the figures. Features H and I cannot unambiguously be derived from this limited disclosure. Hence, document E14 submitted with the grounds of appeal is not *prima facie* relevant for the issue of inventive step. Pursuant to Article 114 EPC and Article 12(4) RPBA, the board decided not to take the late-filed document E14 into consideration, also bearing in mind the circumstances and development of the case in the opposition proceedings as mentioned in point 2.4.1(a).

3.4 In summary, the subject-matter of claim 1 of the main request meets the requirement of inventive step (Articles 52(1) and 56 EPC).

4. Since the patent, as amended on the basis of the documents of the main request, meets the requirements of the EPC, an examination of the auxiliary requests is not required.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated