

Internal distribution code:

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

**Datasheet for the decision
of 22 June 2018**

Case Number: T 0525/13 - 3.5.02

Application Number: 00903274.9

Publication Number: 1062842

IPC: H05B6/68, H05B6/80

Language of the proceedings: EN

Title of invention:

Combination oven with manual entry of control algorithms

Patent Proprietor:

Haier US Appliance Solutions, Inc.

Opponent:

Electrolux Rothenburg GmbH Factory and Development

Relevant legal provisions:

EPC Art. 87(1), 88(4), 100(a), 56
EPC R. 103

Keyword:

Priority - Right of priority invalid
Inventive step - (no)
Reimbursement of appeal fee - (no)



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0525/13 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 22 June 2018

Appellant: Haier US Appliance Solutions, Inc.
(Patent Proprietor) Corporation Trust Center
1209 Orange Street Center
New Castle, DE 19801 (US)

Representative: Neugebauer, Jürgen
Casalonga & Partners
Bayerstrasse 71-73
80335 München (DE)

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

Representative: Schröer, Gernot H.
Meissner Bolte Patentanwälte
Rechtsanwälte Partnerschaft mbB
Bankgasse 3
90402 Nürnberg (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 January 2013
revoking European patent No. 1062842 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
R. Cramer

Summary of Facts and Submissions

- I. The appeal lies from the decision of the opposition division to revoke European Patent No. 1 062 842 for lack of inventive step over a combination of documents including an intermediate document that was considered to be prior art following the conclusion that the right of priority based on US provisional application No. 60/115,744 was invalid. In the following this is referred to as the first priority document, so as to distinguish it from the US application 09/480,962, the priority claim from which was not at issue.
- II. The following documents are relevant for this decision:
- D1 : US 4 582 971;
D8 : "Mikrowellengeräte 6.3", September 1999,
Hauptberatungsstelle für Elektrizitätsanwendung HEA-
e.V., Frankfurt am Main.
- III. In a communication under Article 15(1) RPBA sent together with summons to oral proceedings the board had informed the parties about its doubts as to whether the right of priority of the patent based on the first priority document was validly claimed and whether the subject-matter of the independent claims involved an inventive step.
- IV. Oral proceedings took place before the board on 22 June 2018.

The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted. Further, the appellant

requested that the appeal fee be reimbursed in view of a substantial procedural violation.

The respondent (opponent) requested that the appeal be dismissed.

V. Independent claim 1 of the patent as granted reads:

"A speed cooking oven (10) comprising:
a cooking cavity (122);
a microwave cooking unit (154) for delivering microwave energy into said cooking cavity and operable at a number of power level settings;
characterized by :
at least one radiant cooking unit (150, 152) for delivering radiant energy into said cooking cavity and operable at a number of power level settings;
a control panel (40) operatively connected to said microwave cooking unit and to said at least one radiant cooking unit for user manipulation to select desired oven features; and
a microprocessor operatively connected to said control panel for executing a control algorithm;
said control panel comprising at least a MANUAL COOK button (64);
said microprocessor being configured to execute a manually entered control algorithm in response to user manipulation of said MANUAL COOK button (64); and
said manually entered control algorithm being defined by a user selected total COOK TIME and a user selected one of said number of POWER LEVEL settings for said microwave cooking unit (154) and one of said number of POWER LEVEL settings for said at least one radiant cooking unit (150, 152)."

Independent method claim 9 is directed to a corresponding method for operating a speed cooking oven.

VI. The arguments of the appellant as far as they are relevant for this decision can be summarised as follows:

Right of priority

The feature "MANUAL COOK button" was directly and unambiguously derivable for the person skilled in the art from the first priority document. In particular the person skilled in the art directly realised that the speed cook manual pad disclosed in the first priority document provided the claimed functions of initiating the entering of power levels and cooking time. The term "microcomputer" in the first priority document was used at the same positions in the text as the term "microprocessor" was used in the description of the patent. Thus, microprocessor was used as a generic term encompassing the term microcomputer. The person skilled in the art would have immediately recognised this usage and have concluded that in the patent "microprocessor" could be exchanged with "microcomputer" without any resulting functional difference of the oven described. The term "microprocessor" was therefore used as a synonym for "microcomputer". Moreover, the additional features of a microcomputer such as storage and I/O unit were irrelevant for the claimed oven. The important functions were in any case carried out by the microprocessor.

Inventive step

The distinguishing features over the disclosure of document D1 were not known from document D8. The corresponding buttons in document D8 were merely concerned with radiation heating and not with a combination of microwave heating and radiation heating. Further according to D8, two separate sets of buttons were required to enter a control algorithm. The person skilled in the art would not have changed this layout because it would have involved a structural change of the control of the oven.

- VII. The arguments of the respondent as far as they are relevant for this decision can be summarised as follows:

Right of priority

The subject-matter of the claims of the patent was much more abstract than the description of the first priority document which, being a US provisional application, contained merely the description of an embodiment but no claims. The first priority document did not disclose that a user can enter power levels for a radiant cooking unit and a microwave cooking unit. The functions associated with the power level pad were not transferable to the speed cook manual pad. Further, at the date of priority of the first priority document the person skilled in the art clearly distinguished between microcomputers and microprocessors. Microcomputers could even be built without microprocessors. The term microprocessor in the patent was not to be seen as a synonym of microcomputer.

Inventive step

The wording of the claims of the patent was very broad and unspecific. The manipulation of a button was defined merely as the starting point of entering the control algorithm. By which means the control algorithm was entered was not defined. Nor was the content of the control algorithm defined. Such an unspecific control algorithm was already disclosed in document D8. The symbol on buttons 8 in D8 could even be interpreted as indicating a microwave heater, since the whole section of D8 dealt with ovens combining microwave heaters with conventional heaters.

Reasons for the Decision

1. The appeal is admissible.

2. Right of priority

The discussion as to whether the right of priority from first priority document, US provisional application 60/115,744, is valid concentrated on the question whether the first priority document disclosed the claimed features "MANUAL COOK button" and "microprocessor".

- 2.1 "MANUAL COOK button" (Article 88(4) EPC)

It was disputed whether the first priority document discloses directly and unambiguously a manually entered

control algorithm executed in response to user manipulation of a manual cook button, the control algorithm being defined by a user selected total cook time and a user selected one of a number of power level settings for a microwave cooking unit and one of a number of power level settings for at least one radiant cooking unit.

There was no dispute about the fact that the above mentioned features are not explicitly disclosed in the first priority document in the context of entering the control algorithm in response to user manipulation of the manual cook button. There was further no dispute about the fact that the first priority document discloses the disputed features in the context of adjusting a control algorithm in response to user manipulation of a power level button.

The first priority document discloses on page 3, lines 13 and 14 that figures 11 to 14 "illustrate messages displayed when adjusting/entering the power level and cooking time". The figures themselves contain text in relation to the values to be both entered or adjusted, namely "select upper power", "select lower power", "select micro power", and "adjust time or start". Further, on page 5, lines 19 and 20 it is disclosed in relation to the speed cook manual key pad that "Selecting this pad enables an operator to manually enter speed cooking time and power levels". Regarding the function of the power level key pad, page 5, lines 13 and 14 discloses "Selecting this pad enables adjusting the power levels for speed cooking and microwave cooking". In that context the wording "adjusting" is directed to manually adjusting. Therefore, the disclosure on page 5 is equivalent regarding the power levels for both the power level key

pad and the speed cook manual keypad. Regarding the cooking time, however, only the speed cooking manual button is pertinent.

Page 10, lines 9 to 11 discloses that a microcomputer can execute a manually entered speed cooking program. Finally, on page 12, lines 13 to 27, it is disclosed how to adjust the power level of the upper lamps, the lower lamp, and the microwave during operation.

In summary, the mentioned parts of the disclosure of the first priority document disclose that the speed cooking manual button is used to manually enter the power levels of the upper and lower radiant cooking units and the microwave cooking unit as well as the cooking time.

The board therefore concludes that for the person skilled in the art, the disputed feature "MANUAL COOK button" is directly and unambiguously disclosed in the first priority document as a whole, Article 88(4) EPC.

2.2 "Microprocessor" (Article 87(1) EPC)

The respondent further contested in their reply to the appeal that the claimed feature "microprocessor" is disclosed in the first priority document.

In the view of the board there is not a single mention of a microprocessor in the first priority document. Only a microcomputer is disclosed. Since a microcomputer comprises more components than a microprocessor, namely in addition to the same at least a memory and minimal I/O circuitry, the claimed feature "microprocessor" has no basis in the first priority document.

Consequently, the subject-matter of claim 1 does not relate to the same invention as the first priority document. For this reason alone, the right of priority of the patent is invalid, Article 87(1) EPC.

- 2.3 Consequently, the date of priority of the first priority document cannot be considered as the date of filing of the European patent application within the meaning of Article 89 EPC. Since document D8 has a publication date before the date of filing of the European patent application, document D8 forms prior art under Article 54(2) EPC, albeit not for the reasons provided in the contested decision.

3. Inventive step (Articles 100(a) and 56 EPC)

It was not disputed that the features distinguishing the subject-matter of claim 1 over the disclosure of document D1 are the following:

"said control panel comprising at least a MANUAL COOK button (64);
said microprocessor being configured to execute a manually entered control algorithm in response to user manipulation of said MANUAL COOK button (64); and
said manually entered control algorithm being defined by a user selected total COOK TIME and a user selected one of said number of POWER LEVEL settings for said microwave cooking unit (154) and one of said number of POWER LEVEL settings for said at least one radiant cooking unit (150, 152)."

The respondent asserted that document D8 disclosed on page 14, figure 19, in the central one of buttons 8, a

combination of radiant and microwave cooking symbols. Thus, the central button 8 corresponded to the claimed manual cook button.

The board does not agree with this assertion. In particular, according to figure 19 of D8, separate buttons and separate dials are used in order to manually enter parts of the control algorithm regarding the radiant cooking units and the microwave cooking unit. Dial 2 and buttons 4 relate to the microwave cooking unit and dial 11 and buttons 8 relate to the grill and the convection cooking unit.

However, the board considers this additional technical difference, namely to arrange a single button/dial combination instead of more such combinations, for entering a control algorithm, to lie within the field of ordinary skill from which the person skilled in the art selects without any inventive effort.

Therefore, the subject-matter of claim 1 does not involve an inventive step, even though not all of the features distinguishing the subject-matter of claim 1 over the disclosure of document D1 are known from the disclosure of document D8.

With respect to independent method claim 9, the above reasoning applies *mutatis mutandis*.

4. Therefore the patent cannot be maintained as granted, so that the appeal has to be dismissed, in accordance with the request of the respondent.

5. Reimbursement of the appeal fee (Rule 103 EPC)

The appellant requested reimbursement of the appeal fee under Rule 103 EPC on the basis of an alleged substantial procedural violation, namely the violation of their right to be heard according to Article 113(1) EPC.

According to Rule 103(1)(a) EPC the appeal fee shall be reimbursed where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

Since the appeal is not allowable, it would go beyond the power of the board to examine the question of whether the reimbursement of the appeal fee is equitable by reason of a substantial procedural violation.

Nonetheless, for the sake of completeness, it is noted that an explanation as to why the board considered the alleged substantial procedural violations to be merely a number of unfortunate events was communicated to the parties before the oral proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



D. Magliano

R. Lord

Decision electronically authenticated