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Datasheet for the decision of 2 December 2019

Case Number: T 1818/14 - 3.5.03

Application Number: 10009869.8

Publication Number: 2439603

IPC: G05B19/042

Language of the proceedings: EN

Title of invention:
User interface and appliance of household or industrial type

Applicant:
Electrolux Home Products Corporation N.V.

Headword:
User interface for appliance/ELECTROLUX

Relevant legal provisions:
EPC Art. 56
RPBA Art. 12, 13

Keyword:
Document D4 made available to the public (yes)
Inventive step (no) - main request
Admissibility of auxiliary requests (no) - either not substantiated or prima facie not allowable

Decisions cited:
G 0010/93, T 0055/01, T 1185/13, T 0641/00, T 1903/13, T 1634/09, T 0217/10

Catchword:

Europäisches Patentamt
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Beschwerdekammern

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Case Number: T 1818/14 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 2 December 2019

Appellant: (Applicant)	Electrolux Home Products Corporation N.V. Raketstraat 40 1130 Brussels (BE)
Representative:	Schröer, Gernot H. Meissner Bolte Patentanwälte Rechtsanwälte Partnerschaft mbB Bankgasse 3 90402 Nürnberg (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 25 February 2014 refusing European patent application No. 10009869.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	J. Geschwind
Members:	T. Snell
	R. Gerdes

Summary of Facts and Submissions

I. The present appeal concerns the decision of the examining division refusing European patent application No. 10009869.8 (with publication number EP 2 439 603 A1) principally on the ground that the subject-matter of claim 1 of the main request and of 1st, 2nd and 4th auxiliary requests respectively did not involve an inventive step (Article 56 EPC). In addition, it was held that claim 1 of the third auxiliary request did not comply with Articles 84 and 123(2) EPC.

II. The closest prior art document was held to be D4, which is a user guide for a multifunction oven with pyrolysis ("Four multifonction à pyrolyse"), of types MP 3140, 3150 and 3160, from the company De Dietrich. In the impugned decision, the publication date is given as "July 2000", although the document itself is not dated.

III. In the statement of grounds of appeal, the appellant requested as a main request that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 13 filed during the examination procedure with the letter dated 16 December 2013 (the reference to the main request "as filed on April 30, 2013" in section II.1 of the statement of grounds is clearly erroneous as no request was filed on this date).

Further, the appellant requested that, in the alternative, a patent be granted on the basis of the claims of one of the 1st to 3rd auxiliary requests as filed with the same letter, or of the 4th auxiliary request as filed with the letter dated 20 January 2014, or of a 5th auxiliary request as filed with the statement of grounds of appeal.

Inter alia, the appellant argued that document D4 had not been shown to have been published before the filing date of the application.

IV. In a communication accompanying a summons to oral proceedings, the board gave its preliminary opinion on the case. Inter alia, it considered that D4 was a valid prior art document, and that the subject-matter of claim 1 did not involve an inventive step with respect to this document. The board also questioned the admissibility of all the auxiliary requests on file, but also raised objections pursuant to, inter alia, inventive step with respect to claim 1 of each of the auxiliary requests.

V. With a response dated 30 October 2019 to the board's communication, the appellant filed new 6th and 7th auxiliary requests.

VI. Oral proceedings were held on 2 December 2019 in the presence of the appellant.

The appellant confirmed that the requests on file were maintained as the main and 1st to 7th auxiliary requests referred to above.

At the end of the oral proceedings, the chairman announced the board's decision.

VII. Claim 1 of the main request reads as follows:

"User interface adapted to an appliance of household or industrial type selected from the group consisting of baking ovens, microwave ovens, washing machines, dishwashers, refrigerators and freezers, comprising a

display panel (1), and a controller adapted to controlling the display panel (1), and adapted to processing operational parameters of a preset or user defined program into display information, wherein the controller is adapted to display in a first display panel section (7) of the display panel (1) at least one of a time course (2, 3, 4, 5, 6) and chart of linear, arrowed or curved geometry of at least one operational parameter, and wherein the controller is further adapted to display in a second display panel section (9, 10), other than the first display panel section (7), an operational mode of the appliance, the operational mode being represented by an animated graphics icon, and the animated graphics icon being a superposition of at least one pictogram (12) and an image sequence (13) of several images."

VIII. For reasons of conciseness, the text of the claims of the other requests is not recited.

Reasons for the Decision

1. The public availability of D4

1.1 The appellant questions (apparently for the first time in these appeal proceedings) whether D4 is comprised in the state of the art within the meaning of Article 54(2) EPC and argues that there is no complete chain of evidence proving that D4 was published prior to 2010.

1.2 The board notes however that, in accordance with case law, the availability to the public of a document such as a user manual is to be assessed on a "balance of probabilities" basis, i.e. whether publication is

highly likely to have occurred. It is however not necessary to prove beyond all reasonable doubt when the document was published (cf. e.g. T 55/01, point 4.1 of the reasons).

1.3 On page 2 of D4 there are two references to a telephone tariff in "F", i.e. French Francs, which were used until 2002. On page 2 it is stated that further information is available "en consultant le 36 15 ... ". It is well known that this number referred to the French Minitel system, a videotex online service accessible through telephone lines. There can be no serious doubt that D4 was made available to the public before the filing date of the application in 2010, since by then the Minitel system had long since been rendered obsolete by the Internet.

1.4 The board concludes that D4 is comprised within the state of the art within the meaning of Article 54(2) EPC.

2. Main request - claim 1 - inventive step

2.1 The present application concerns a user interface for an appliance, in particular a baking oven. Essentially, as claimed in claim 1, the user interface has a controller for controlling a display panel which has first and second display panel sections. The first display panel section displays at least one of a time course and chart of linear, arrowed or curved geometry of at least one operation parameter, and the second display panel displays an operational mode of the appliance, the operational mode being represented by an animated graphics icon, the animated graphics icon being a superposition of at least one pictogram and an image sequence of several images.

2.2 D4 discloses a baking oven with a user interface. Implicitly, the user interface is controlled by a controller. There are also first and second display panel sections (respectively the left and right icons in the last figure on page 3).

2.3 In the first display panel section of this figure, there is an indicator of rising temperature ("Indicateur de montée en température"), i.e., apparently, bars representing the temperature are visually emphasised (e.g. are made dark or lit up) as the oven temperature increases over time after being switched on. This chart has an approximately linear relationship between the height of the bars and horizontal distance across the display. The temperature is an operational parameter. Consequently, D4 discloses, or at least renders obvious, a first display panel section as claimed in claim 1.

2.4 In the second display panel section of this figure, there is an icon which displays the mode of cooking, i.e. the operational mode ("Afficheur du mode de cuisson"). This icon is an animated graphics icon (cf. the last figure of page 5; "L'afficheur de mode de cuisson s'anime"). Plausibly, the grill bars in the display visibly change, e.g. light up or are made dark, in a repeating sequence. The icon furthermore apparently has a static part, namely the square box surrounding the main image of the grill bars.

2.5 The appellant disputed that the term "s'anime" should be understood as animation within the meaning of claim 1. In the appellant's view, the icon is displayed following the pressing of the "start/stop" button, but the image thereafter remains static.

2.6 The board finds this argument to be implausible. Prior to pressing "start/stop", it is stated that "Le mode de cuisson s'affiche", i.e. at this stage the image is static. It follows that the term "s'anime" means something else. The skilled reader would conclude that "s'anime" implies an animation going beyond a mere static display. This is further consistent with the use of the words "afficher" and "s'animer" as used elsewhere in D4. In this respect, see page 13, sections c) and d) as concerns the display and animation of the symbol for pyrolysis.

2.7 Therefore, the subject-matter of claim 1 differs from the disclosure of D4 only in that the animated graphics icon consists of a superposition of at least one pictogram and an image sequence of several images.

2.8 In accordance with case law (cf. e.g. T 1185/13, point 4.1 of the reasons), the manner of presentation of information, i.e. how it is displayed, may relate to solving a technical problem and thus be able to contribute to inventive step if the way the information is displayed credibly assists the user in performing a technical task.

2.9 In the present case, the distinguishing features have no technical effect beyond the technical details of implementing an icon with a static part and an animated part. In particular, there is no improvement in the ability of the user to operate the oven by enabling further indications of the operational mode to be displayed, as argued by the appellant. In this respect, the animated graphics icon may be nothing more than a foreground representation of an oven with a background image sequence of burning wood, or a foreground picture

symbolising the operational mode and an image sequence representing a fireplace with glowing coals (cf. paragraph [0056] of the description), which, when compared with D4, merely concerns a more aesthetically pleasing way of displaying the operational mode. Consequently, any improvement here lies within the field of a presentation of information (cf. Article 52(2)(d) EPC). Using the established COMVIK approach (cf. T 641/00), this aspect therefore does not contribute to inventive step.

2.10 The technical problem therefore reduces to that of how to implement technically an animated graphic icon consisting of a static part and a dynamic part. The claimed solution, i.e. the superposition of a pictogram and an image sequence, is deemed to be obvious to the skilled person based on common general knowledge, as it is well known that simple animation can be produced by a sequence of image frames (e.g. of a ball) superimposed on a background. A well-known example of this type of animation is the use of multiple image layers in the context of GIF (cf. EP 1 107 605 A2 (= D7), paragraph [0005], which refers to the prevailing state of the art). Further, in the case of D4, it is obvious that the "square box" part of the icon could be a static "pictogram", and the changing grill bars could be represented by a sequence of images. Furthermore, the appellant has not claimed that creating simple animation in this manner was per se not known in the art.

2.11 Consequently, the subject-matter of claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

3. 1st to 4th auxiliary requests - admissibility in the light of Articles 12(2) and (4) RPBA

3.1 These requests were filed during the examination procedure and rejected by the examining division. In order for requests to be admitted to the appeal proceedings, it is incumbent on the appellant to file a full substantiation explaining why the decision should be amended, and to "specify expressly all the facts, arguments and evidence relied on" (cf. Article 12(2) RPBA; T 217/10, point 5 of the reasons).

3.2 In the present case, the appellant refers in the statement of grounds of appeal only to submissions made during the examination procedure. These submissions however by implication do not address the reasons given in the impugned decision, noting that the examining division refuted the arguments given by the applicant in the submissions referred to by the appellant, or explain which aspect of the examining division's reasoning is flawed. In the case of the 3rd auxiliary request, which was refused on the grounds of non-compliance with Articles 123(2) and 84 EPC, no arguments are presented at all in response to these objections. Furthermore, global references to submissions made during the examination procedure (even if limited to certain parts of particular submissions) are not normally a substitute for arguments being expressly made in the statement of grounds of appeal, since it should not be the task of the board to identify within these submissions which arguments might still be relevant and applicable to the appellant's case.

3.3 The appellant argued that the same reasons given in respect of the main request implicitly applied to the

1st to 4th auxiliary requests (i.e. the contention that D4 is not pre-published and/or that D4 does not render the subject-matter of claim 1 obvious). The requirement for a substantiation was therefore implicitly complied with.

3.4 The board does not accept this argument. Auxiliary requests are supposed to represent fall back positions in case the arguments made with respect to the higher ranking requests do not succeed. By implication, each request therefore requires a substantiation going beyond the reasoning given in respect of the higher ranking requests.

3.5 The 1st to 4th auxiliary requests therefore respectively do not comply with the requirements for an admissible request under Articles 12(2) and 12(4) RPBA. Nevertheless, the requests may be subsequently admitted by the board at the moment a substantiation is provided, this being then a change in the appellant's case within the meaning of Article 13(1) RPBA.

3.6 In the present case, only the 2nd to 4th auxiliary requests have been substantiated with the letter dated 30 October 2019. It follows that the 1st auxiliary request cannot be admitted. The admissibility of the 2nd to 4th auxiliary requests having regard to Article 13(1) RPBA is considered below (see point 5).

4. *5th auxiliary request - admissibility in the light of Article 12(4) RPBA*

4.1 This request has been filed for the first time in the appeal proceedings. Its admitting is therefore at the discretion of the board (Article 12(4) RPBA).

4.2 In accordance with case law, auxiliary requests are expected to form a convergent set, i.e. to develop the appellant's case in a single direction (cf. T 1903/13, point 3.3 ff. of the reasons). Claim 1 of the 5th auxiliary request is however not convergent with the main request since features have been omitted ("at least one of a time course and chart" and "an animated graphics icon ... etc"). Furthermore, there are now previously unclaimed features (numerical values of start and stop times and a numerical intermediate time representative of the residual time), which effectively represents the filing of a fresh case. The main purpose of appeal proceedings is however to review the correctness of the impugned decision (cf. G 10/93, point 3 of the reasons), and not to provide an opportunity to continue the examination procedure on the basis of substantially amended claims based on previously unclaimed matter which might require an additional search.

4.3 The board therefore decides to not admit the 5th auxiliary request.

5. 2nd to 4th, 6th and 7th auxiliary requests - admissibility in the light of Article 13(1) RPBA

5.1 The 2nd to 4th auxiliary requests have been substantiated with the letter dated 30 October 2019, i.e. one month before the scheduled oral proceedings before the board. With the same letter, the 6th and 7th auxiliary requests were filed.

5.2 According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the board's discretion. The discretion shall be exercised in view

of, inter alia, the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.

5.3 In accordance with case law, a request may be admitted pursuant to Article 13(1) RPBA at a late stage of appeal proceedings if sound reasons exist for filing the request so far into the proceedings, which may be the case when amendments are occasioned by developments during the proceedings, if the request does not extend the scope of discussion as determined by the grounds of appeal and the respondent's reply, it being noted that under Article 12(2) RPBA the grounds of appeal and the reply must contain a party's complete case, and if the request is clearly or obviously allowable, meaning that it must be immediately apparent to the board, with little investigative effort on its part, that the amendments made successfully address the issues raised without giving rise to new ones (cf. T 1634/09, point 3.2 of the reasons). In addition, as set out above, auxiliary requests should form a convergent set.

5.4 In the present case, the 2nd to 4th auxiliary requests are prima facie neither convergent with the higher ranking requests, nor are they clearly or obviously allowable (cf. the reasons set out in the board's preliminary opinion accompanying the summons to oral proceedings, point 7). The board therefore exercises its discretion under Article 13(1) RPBA by not admitting these requests.

5.5 Claim 1 of the 6th and 7th auxiliary requests, respectively includes the feature "wherein the controller is adapted to move the animated graphics icon of the second display panel section over the

display panel according [to] a parameter change velocity".

5.6 This feature comprises the unusual term "parameter change velocity". Even if the appellant's understanding of this term as the rate of change of the parameter is accepted, the feature requires that the animated graphics icon be moved over the display panel in dependence on this value. There is however not a single example in the description of a parameter of which the rate of change is related to the movement of the icon over the display panel, which rather implies a displacement of the whole icon, or indeed any example of an icon moving over the display panel.

5.7 The appellant, referring to paragraph [0054] argued that movement of the image within the icon was meant rather than movement of the icon itself. However, the board notes that a claim should be clear by itself, i.e. reflect clearly what is meant rather than require a speculative interpretation relying on the description. It follows that claim 1 of each of auxiliary requests 6 and 7 is unclear within the meaning of Article 84 EPC.

5.8 As claim 1 of the 6th and 7th auxiliary requests includes a feature which gives rise, prima facie, to an objection of lack of clarity, the board decides not to admit these requests to the proceedings either (Article 13(1) RPBA).

6. Conclusion

As there is no allowable request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. H. A. Patin J. Geschwind

Decision electronically authenticated