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**Datasheet for the decision  
of 2 December 2019**

**Case Number:** T 0304/15 - 3.5.02

**Application Number:** 07115692.1

**Publication Number:** 2034801

**IPC:** H05B6/12, H05B6/06

**Language of the proceedings:** EN

**Title of invention:**

An Improved Induction Cooking Appliance and a Method for  
Checking the Cooking Capabilities of a Piece of Cookware

**Patent Proprietor:**

Whirlpool Corporation  
TEKA Industrial S.A.

**Opponent:**

Electrolux Rothenburg GmbH Factory and Development

**Relevant legal provisions:**

RPBA Art. 12(2), 13(1)

**Keyword:**

Late-filed requests not admitted - no convincing justification  
for late filing, detrimental to procedural economy

**Decisions cited:**

G 0001/99



**Beschwerdekammern**

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Case Number: T 0304/15 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 2 December 2019**

**Respondent:** Whirlpool Corporation  
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**Respondent:** TEKA Industrial S.A.  
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**Representative:** Spina, Alessandro  
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**Appellant:** Electrolux Rothenburg GmbH Factory and  
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**Representative:** Schröer, Gernot H.  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
10 December 2014 concerning maintenance of the  
European Patent No. 2034801 in amended form.**

**Composition of the Board:**

**Chairman**            R. Lord  
**Members:**            F. Giesen  
                             R. Cramer

## **Summary of Facts and Submissions**

- I. This appeal by the opponent (appellant) lies from the interlocutory decision of the Opposition Division posted on 10 December 2014 that the amended European Patent No. 2034801 and the invention to which it relates met the requirements of the EPC. This decision was based on the then sole request of the patent proprietors.
- II. The patent proprietors had originally also filed an appeal against this decision. With notification dated 30 April 2015, the patent proprietors were notified that no statement of grounds of appeal had been received and that, as a consequence, it was to be expected that their appeal would be rejected as inadmissible.
- III. After being informed by a notification pursuant to Article 15(1) RPBA of the Board's preliminary opinion, the patent proprietors with letter dated 14 October 2019 filed a new main request and five auxiliary requests.
- IV. Oral proceedings before the Board took place on 2 December 2019.

At the oral proceedings, the patent proprietors declared that they withdrew their appeal.

- V. The final requests were as follows:

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

The patent proprietors (respondents) requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims of the main request or of one of the first to fifth auxiliary requests, all filed with the letter of 14 October 2019, or on the basis of the claims of the sixth auxiliary request filed during the oral proceedings.

VI. Claim 1 according to the **main request** reads as follows:

*"An induction cooking appliance (1) comprising:  
at least an inductor coil (2);  
electronic driving means (3) for driving an AC current through said inductor coil;  
a control unit (4) for controlling the operation of said induction cooking appliance and comprising a user interface (42);  
said control unit comprising detecting means (41) for providing first data related to the impedance ( $Z_{coil}$ ), at the input leads (P1, P2) of said inductor coil (2) when said inductor coil (2) is inductively coupled to a cookware (100) at a cooking region (101) of said induction cooking appliance (1), said control unit (4) being adapted to process said first data for obtaining second data related to the cooking capabilities of said piece of cookware, characterised in that said first data provided by said detecting means at the input leads (P1, P2) of said inductor coil (2) is the complex impedance ( $Z_{coil}$ ), the user interface (42) being configured to provide the user with said second data related to the performances of said piece of cookware in a variety of operative situations so that the user has available a wider*

*range of information and not mere go/no-go signals."*

VII. Claim 1 according to the **first auxiliary request** is identical to claim 1 according to the main request except that the feature "*in a variety of operative situations*" is replaced by "*in a variety of different magnetic field frequencies*".

VIII. Claim 1 according to the **second auxiliary request** is identical to claim 1 of the main request except that the feature

*"on the cooking capabilities and quality of said piece of cookware"*

is added before "*and not mere go/no-go signals*".

IX. Claim 1 according to the **third auxiliary request** is essentially a combination of the first and second auxiliary request, i.e. it is identical to the first auxiliary request except for the addition of the feature "*on the cooking capabilities and quality of said piece of cookware*" added before "*and not mere go/no-go signals*".

X. Claim 1 according to the **fourth auxiliary request** is identical to the main request with the exception that the characterising portion is amended to read

*"characterised in that said first data provided by said detecting means at the input leads (P1, P2) of said inductor coil (2) from first values related to the magnitude and phase of the current and/or voltage forced on said inductor coil is the complex impedance ( $Z_{coil}$ ), the user interface (42) being*

*configured to provide the user with said second data related to the performances of said piece of cookware in a variety of operative situations".*

Attention is drawn in particular to the fact that the feature concerning "wider information and not mere go/no go signals" has been deleted from this request.

XI. Claim 1 according to the **fifth auxiliary request** is identical to claim 1 of the fourth auxiliary request except that the feature "*in a variety of operative situations*" is replaced by "*in a variety of different magnetic field frequencies*".

XII. Claim 1 of the **sixth auxiliary request** is identical to that of the main request except that the feature

*"so that the user has available a wider range of information and not mere go/no-go signals."*

has been deleted.

XIII. The appellant's arguments relevant for the present decision were essentially as follows:

The main and first to sixth auxiliary requests were filed late and should not be admitted into the appeal proceedings. They should have been filed in response to the appellant's statement of the grounds of appeal. The preliminary opinion of the Board had not raised any new issues. The admittance of these requests would require substantial discussions, including *inter alia* the prohibition of *reformatio in peius*. The amendments to these requests did not overcome the deficiencies objected to by the appellant or those identified in the preliminary opinion of the Board. In particular, the



amendment to claim 1 according to the sixth auxiliary request consisted in the deletion of the very feature that had been added in the first instance proceedings to establish novelty and inventive step. Allowing this request would put the opponent and sole appellant in a worse position than if they had not appealed and would re-open the substantive discussion already held in the first instance proceedings. In addition, it was filed only towards the end of the oral proceedings, so that the appellant could not reasonably be expected to appropriately react to this request.

XIV. The respondents' arguments relevant for the present decision were essentially as follows:

The new requests should be admitted into the proceedings. The respondents had relied on the correctness of the decision of the Opposition Division and were taken by surprise by the preliminary opinion of the Board. In particular, the objection of an unallowable intermediate generalisation was a new issue raised by the Board. The new requests were filed in response to this surprising preliminary opinion. Fairness required that the respondents, who relied on the correctness of a decision of the Opposition Division, which turned out to be incorrect in substance, get a chance to react to this new situation and remedy the mistake made by the Opposition Division. The requests were filed more than a month before the date foreseen for the oral proceedings to allow a suitable amount of time for the appellant to react. The added features limited the scope of the claims, hence there was no problem concerning *reformatio in peius*. Admittance of the claims would furthermore only require a straightforward discussion. In particular the sixth auxiliary request should be admitted in view of

decision G 1/99 of the Enlarged Board of Appeal as an amendment intended to overcome the problem of added subject-matter erroneously allowed by the Opposition Division. The feature objected to as unclear was deleted from claim 1 according to the sixth auxiliary request, it was clarified that the first data was the complex impedance, the objection of added subject-matter extending beyond the content of the original application was addressed by adding "variety of operative situations". The reply to the statement of grounds of appeal contained already all arguments regarding clarity and sufficiency of disclosure. The discussion upon admittance of this request would thus be very straightforward.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Admissibility of the respondents' requests
  - 2.1 The main and first to sixth auxiliary requests were filed after the respondents' reply to the statement of grounds of appeal. They represent therefore an amendment to the respondents' case within the meaning of Article 13(1) RPBA and their admittance into the proceedings is therefore subject to the discretion of the Board.
  - 2.2 The Board exercised their discretion so as to not admit the requests.

- 2.2.1 The respondents did not offer any convincing reasons, why the requests were not filed in the reply to the statement of grounds of appeal as required by Article 12(2) RPBA.

The appeal proceedings are a judicial review of the decision under appeal. Therefore a party always has to take into account that a Board of Appeal may overturn a decision under appeal. The fact that the decision of the Opposition Division was favourable for the respondents did not exonerate them from submitting suitable fallback positions in reply to the statement of grounds of appeal. As soon as the opponent had filed their appeal, the respondents could no longer rely on the decision under appeal being upheld.

- 2.2.2 The respondents submitted that because the Opposition Division decided incorrectly in substance it was a matter of fairness that they get a chance to amend the erroneously maintained patent. The Board does not find this argument convincing. The respondents did indeed have the chance to file such amended claim requests in reply to the statement of grounds of appeal, but did not do so. The Board fails to see how fairness dictated that the respondents should be allowed to delay the filing of amended claims until after they were informed of the preliminary opinion of the Board.

- 2.2.3 The preliminary opinion of the Board did not raise any new issues that had not been brought up in the statement of grounds of appeal, contrary to the respondents' submissions.

The respondents argued that the Board's preliminary opinion on added subject-matter was a new issue. This is, however, not correct. In particular, in section

VII. of the statement of grounds of appeal, which deals with added subject-matter, on page 19, first complete to third paragraph, the appellant had argued in detail that paragraphs [0023] and [0024] of the opposed patent only disclosed that the wider range of information was in part due to the first data being measured in a variety of operative situations. Except for the fact that a basis for the amendments must be found in the application as filed and not in the opposed patent publication, the Board merely agreed in their preliminary opinion with this statement and hence did not raise any new issues.

- 2.2.4 Concerning the sixth auxiliary request, the Board also cannot see a justification why this request was not included with the reply to the statement of grounds.

Since the amendments concern *inter alia* the deletion of a feature from claims 1 and 8 compared to the claims as maintained by the Opposition Division, it appears that allowing such request would put the sole appellant and opponent in a worse position than if they had not appealed. It would therefore have been necessary to decide whether all prerequisites defined in the decision G 1/99 of the Enlarged Board of Appeal for an exemption from the principle of prohibition of *reformatio in peius* applied to the present case. The respondents have not presented specific arguments concerning this aspect. There were for example no explanations as to why the patent would have to be revoked as a direct consequence of the inadmissible amendment as required by G 1/99 or whether the respondents had kept to the prescribed order of possible requests according to reasons 15 of G 1/99.

Furthermore, the deleted feature is the very feature added in the opposition proceedings in order for the claimed subject-matter to meet the requirements of novelty and inventive step. The respondents failed to point out how the various objections that had been raised by the appellant, in particular lack of novelty and lack of inventive step, were overcome. They only mentioned that this feature had merely a clarifying function but that the remainder of the claim had all the technical features necessary to define patentable subject-matter.

It can be seen from the foregoing that admitting the sixth auxiliary request would have entailed complex discussions. In fact, it would have put the discussion from its state at the end of the oral proceedings before the Board back to the status which prevailed at the beginning of the opposition proceedings. This is clearly detrimental to procedural economy and given the current state of proceedings not acceptable. Admittance of this request would not only have turned the judicial review proceedings into a continuation of the first-instance proceedings preceding it, but it would have meant a complete re-opening. This would have clearly been outside of the framework and purpose of the appeal proceedings.

3. Due to the non-admittance of the late-filed requests there is no version of the patent in the proceedings which was submitted by the patent proprietors within the meaning of Article 113(2) EPC on which the patent could be maintained. As a consequence the patent has to be revoked according to Article 101(3) (b) EPC.
4. Therefore, the Board accedes to the appellant's request and rejects the respondents' requests.

**Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated