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**Datasheet for the decision  
of 15 March 2019**

**Case Number:** T 0839/15 - 3.2.04

**Application Number:** 10155661.1

**Publication Number:** 2363048

**IPC:** A47J27/04, A23L1/01

**Language of the proceedings:** EN

**Title of invention:**

Steam oven for "sous-vide" cooking and method for using such oven

**Patent Proprietor:**

Whirlpool Corporation

**Opponent:**

Electrolux Rothenburg GmbH Factory and Development

**Headword:**

**Relevant legal provisions:**

EPC Art. 100 (b)

**Keyword:**

Grounds for opposition - insufficiency of disclosure (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0839/15 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 15 March 2019**

**Appellant:** Whirlpool Corporation  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 26 February  
2015 revoking European patent No. 2363048  
pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** G. Martin Gonzalez  
W. Van der Eijk

## Summary of Facts and Submissions

I. The appellant-proprietor lodged an appeal, received on 21 April 2015, against the decision of the Opposition Division of the European Patent Office posted on 26 February 2015 revoking European patent No. 2 363 048 pursuant to Article 101(2) EPC, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 30 June 2015.

II. Opposition was filed against the patent as a whole under Article 100(a) EPC based on lack of novelty and lack of inventive step and under Article 100(b) on insufficiency of disclosure.

The Opposition Division held that the invention was not sufficiently disclosed and revoked the patent on the ground of Article 100(b) EPC.

III. The appellant-proprietor requests that the decision under appeal be set aside and the patent be maintained as granted (main request), or, alternatively, maintained in amended form on the basis of auxiliary request 1 or 2, both filed with letter of 7 July 2016.

The respondent opponent requests that the appeal be dismissed.

IV. Oral proceedings were held on 15 March 2019.

V. The independent claims of the granted patent read as follows:

"1. Steam oven for cooking food placed in a vacuumized and sealed pouch and comprising a user interface and an electronic control unit, **characterized**

**in that** said electronic control unit is adapted to select a predetermined heating temperature on the basis of a food category chosen by the user through the user interface and of a maximum predetermined load of food, and to select a heating time according to a predetermined reduction of food pathogens."

"8. Method for cooking food placed in a vacuumized and sealed pouch and loaded in a steam oven, **characterized in that** it comprises the following steps:

- choosing a food category:
- automatically selecting a predetermined heating temperature related to a cluster of food categories to which the chosen food category belongs and to a predetermined maximum amount of food, and
- maintaining the food at said predetermined temperature for a predetermined time in order to achieve a predetermined reduction of food pathogens."

VI. The appellant-proprietor argued as follows:

The patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person.

VII. The respondent-opponent argued as follows:

The patent does not sufficiently disclose the invention as claimed. As the written decision of the Opposition Division does not address the issues of novelty or inventive step, remittal to first instance for consideration of these issues by two instances is the most appropriate course of action.

## Reasons for the Decision

1. The appeal is admissible.
2. Background of the invention.

The invention relates to cooking food placed in a vacuumized and sealed pouch in a steam oven. This technology involves thermally processing raw or partially prepared food in vacuumized and sealed pouches at a heating temperature, normally under 100 °C, and optionally chilling and storage at 0-3 °C before reconstitution and consumption, see specification paragraph [0002]. Some of the major microbiological hazards associated with *sous-vide* processing are linked to food pathogens that may survive the cooking temperature below 100 °C (e.g. 70 °C), see specification paragraphs [0004]-[0005]. The claimed invention aims at providing a steam oven and a corresponding method for performing *sous-vide* cooking without the above risk of pathogens, especially for domestic use, see paragraph [0013]. To this end the claimed steam oven and method call for "a well-defined combination of cooking time and temperature and ... a maximum quantity of food loaded in the steam cavity" to guarantee safety and performance of the food cooked accordingly, see paragraph [0015].

3. Sufficiency of disclosure.

The appellant-proprietor disputes the decision's finding that the patent is not sufficiently disclosed, see written decision section 2.2.3.

- 3.1 The decision held that there is not enough guidance in the patent disclosure for the skilled person to carry

out the feature of claim 1, and corresponding feature of independent method claim 8, that

*the "control unit is adapted to select a predetermined heating temperature on the basis of a food category chosen by the user... and of a maximum predetermined load of food".*

The Opposition Division, as well as the respondent-opponent, interprets the above feature as requiring a correlation or interdependency between heating temperature values and maximum load of food, for instance that different values of maximum load of food would correspond to different values of heating temperatures. Only with such kind of information would the skilled person be in a position to embody an *automatic selection* or a control unit, as claimed, able to *select* a predetermined heating temperature *on the basis of (claim 1)... or related to (claim 8)... a maximum predetermined load of food*. According to this claim interpretation, the control unit, in order to determine cooking (heating) temperature, would require two input variables or parameters, namely food category (chosen by the user) and maximum predetermined load of food. The Opposition Division argues that while the patent specification clearly associates or correlates the selection of a temperature and duration to a choice of food category, see e.g. paragraph [0022], table 1 or table 2 of the specification, it does not provide the required similar corresponding correlation data of heating temperature (or duration) to different values of maximum load of food.

- 3.2 However, in the Board's opinion, this view fails to observe the general principles of claim interpretation, as explained in the Case Law of the Boards of Appeal, 8th edition 2016 (CLBA), II.A.6.1. Thus "the skilled person, when considering a claim, should rule out

interpretations which are illogical or which do not make technical sense. He should try, with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation of the claim which is technically sensible and takes into account the whole disclosure of the patent. The patent must be construed by a mind willing to understand, not a mind desirous of misunderstanding". In the Board's view the skilled person when reading the claim with the aim of making technical sense will read the terms "on the basis of" (claim 1) and "related to" (claim 8), not as referring to food category and maximum predetermined food load as input variables. Rather they will understand these terms in their broadest possible sense as defining some unspecified relationship between the heating temperature and both the food category selected by the user and a predetermined maximum food load. To the extent that on first reading of the claim alone they might not fully understand the technical significance of this undefined relationship, the skilled reader, with their mind willing to understand, would therefore, read it in the context of the whole patent, by drawing on the description and drawings to gain a better understanding of the terms used in the claims.

3.3 In the Board's view the patent specification provides sufficiently clear and complete information regarding how "on the basis of" or "related to" maximum food load is to be understood. Specification paragraph [0023] states that "for each food category and for a predetermined maximum quantity of food ... a theoretical minimum cooking time was determined. ... [this] load has to be considered as a maximum value admissible for assuring the predetermined reduction of food pathogens ...". If the meaning and role of maximum



food load is not already sufficiently clear from this sole passage, the following paragraphs [0024] to [0044] illustrating the methodology underlying the present invention, provide ample explanation. Table 1 gives the different cooking temperatures for the various food categories. Paragraphs [0024] to [0044] then describe how minimum cooking time is determined from experimental lethality curves, in terms of equivalent (aggregate) thermal death time F (time required to reduce microbial numbers below set levels) against minimum derived time, one of which is illustrated in figure 2. These tests are carried out under set conditions, including set food load, paragraph [0029] and the results are set out in table 2. Paragraph [0041] then explains how, for instance using a look up table, the electronic control unit of the oven can then use this data to determine temperature and time after user choice of food category. It is clear from these passages that all results are given for a set maximum food quantity or food load, cf. paragraphs [0023] and [0029], i.e. they are standardized or normed to a given maximum food load. Thus the predetermined maximum load of food is to be understood simply as a fixed condition or limit for each type of food or food category, the specific maximum food load of 700 g per pouch for the embodiment according to example 1 in paragraph [0029]. The feature is accordingly not to be understood as an input variable for the controller in order to select of temperature, but rather as a condition for which the heating temperature value returned by the control is valid. This understanding is, in the Board's opinion, also stressed by the specific wording of the feature *maximum* and *predetermined* in the claimed feature.

In summary, the skilled person understands that the subject-matter of claims 1 and 8 read in the light of these passages requires that the user chooses a food category, which choice serves the control to determine a corresponding heating temperature and heating time, which are only valid for a given maximum predetermined load of food for that choice, i.e. up to that value. This fixed or predetermined load limit, above which the temperature and duration selection is not valid, functionally links that maximum load of food with the selection of the control unit, in the manner required by the granted claims.

3.4 As is evident from the above, the specification also describes at least one way to reproduce the invention defined by the claims, see example 1 of the description, cf. CLBA, 8th edition, 2016, II.C.4.2. The Board is also convinced that the indications in the described example enable the skilled person to also carry out without undue burden all other possible variants of the invention falling under the scope of the contested claims.

3.5 The Board is also not convinced by the further argument, that the inconsistent use of terms ("maximum load", "maximum quantity"; cf. paragraphs [0015], [0023]) in the description would constitute an insurmountable obstacle for the skilled person to carry out the invention. The skilled person, with their mind willing to understand and using normal reading skills and common sense, easily takes such minor textual imperfections, which are part of the daily reality of the patent texts that they read, in their stride.

3.6 For the above reasons, the Board concludes that the invention as defined by the granted claims is sufficiently disclosed within the meaning of Article 100(b) EPC.

4. Remittal

The Opposition Division has left the further substantive issues of novelty and inventive step undecided. Since the main purpose of the appeal proceedings is to give the losing party a possibility to challenge the decision of the Opposition Division on its merits, the Board is of the view that the most appropriate course of action is to exercise its discretion under Article 111(1) EPC and remit the case for further prosecution (including due process consideration of the admission of late-filed documents, cf. minutes, section 2). Indeed both parties have requested remittal.

In view of the above, the Board has decided to remit the case for further prosecution.

## Order

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

1. **The decision under appeal is set aside.**
2. **The case is remitted to the department of first instance for further prosecution.**

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated