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**Datasheet for the decision
of 25 January 2019**

Case Number: T 1341/15 - 3.2.06

Application Number: 07120220.4

Publication Number: 1964959

IPC: D06F37/26

Language of the proceedings: EN

Title of invention:

Connection mechanism for balance weight

Patent Proprietor:

Vestel Beyaz Esya Sanayi ve Ticaret A.S.

Opponent:

BSH Bosch und Siemens Hausgeräte GmbH

Headword:

Relevant legal provisions:

EPC Art. 56, 84, 123(2)

RPBA Art. 13(1)

Keyword:

Inventive step - (no)

Claims - clarity - auxiliary request (no)

Amendments - added subject-matter (yes)

Late-filed auxiliary requests - request clearly allowable (no)
- admitted (no)

Decisions cited:

G 0007/95

Catchword:



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Case Number: T 1341/15 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 25 January 2019

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 27 March 2015
rejecting the opposition filed against European
patent No. 1964959 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
J. Hoppe

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition filed against the patent in suit (hereinafter "the patent").
- II. The opposition division decided that the only opposition ground, i.e. lack of inventive step (Article 100(a) in combination with 56 EPC) did not prejudice maintenance of the patent.
- III. The Board issued a summons to oral proceedings with a subsequent communication containing its provisional opinion in which the Board stated *inter alia* that the subject-matter of claim 1 appeared not to involve an inventive step.
- IV. With its letter dated 31 December 2018 the respondent submitted auxiliary requests 1 to 7.
- V. Oral proceedings were held before the Board, in the course of which the respondent withdrew auxiliary requests 5 to 7.
- VI. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- VII. The respondent (patent proprietor) requested finally as a main request that the appeal be dismissed or, auxiliarily, that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 4 filed with letter dated 31 December 2018.
- VIII. Claim 1 of the main request (patent as granted) reads as follows:

"A connection system of and between the tub (20) and the balance weight (30) in washing machines, said system comprising at least one expanding-type connection slot (24) for avoiding the lateral displacement of the tub (20) with respect to the balance weight (30) and at least one fixed-type connection slot (21) for avoiding the axial displacement of the tub (20) with respect to the balance weight (30), so that both connection slots (24, 21) are provided on the tub (20) section where the balance weight (30) is to be fastened; said expanding-type connection slot (24) having a cylindrical form and a hole (28) on its central axis to introduce a first connection or fixation means (26) therein, and comprising at least one cleavage (27) on itself starting from said hole (28) and extending outwardly in order to increase its external diameter while said connection means (26) is assembled into said hole (28); and said fixed-type connection slot (21) having a cylindrical form and a hole (29) on its central axis to introduce a second fixation or connection means (23) therein."

IX. Claim 1 of auxiliary request 1 reads as follows:

"A connection system of and between the tub (20) and the balance weight (30) in washing machines, said system being characterized by comprising at least one expanding-type connection slot (24) for avoiding the tub's (20) lateral displacement with respect to the balance weight (30) and at least one fixed-type connection slot (21) for avoiding the tub's (20) axial displacement with respect to the balance weight (30), so that both slots (24, 21) are provided on the tub (20) section where the balance weight (30) is to be

fastened

wherein the expanding-type and fixed-type connection slots (24, 21) are used together on the same tub (20); said expanding-type connection slot (24) having a cylindrical form and a hole (28) on its central axis to introduce a connection or fixation means (26) therein, and comprising at least one cleavage (27) on itself starting from said hole (28) and extending outwardly in order to increase its (24) external diameter while said connection means (26) is assembled into said hole (28); and said fixed-type connection slot (21) having a cylindrical form and a hole (29) on its central axis to introduce a fixation or connection means (23) therein, wherein each fixed-type connection slot (21) becomes introduced into a connection hole (31) on the balance weight (30), when the tub (20) and balance weight (30) are in their assembled form. [sic] and wherein each expanding-type connection slot (24) becomes introduced into another connection hole (34) on the balance weight (30), when the tub (20) and balance weight (30) are in their assembled form."

- X. Compared to claim 1 of auxiliary request 1, in claim 1 of auxiliary request 2 the following feature has been added at the end:

"wherein said connection means (23) is structured so as to pull onto itself said slot (21), to exert an axial force on the balance weight (30) in the fixed-type connection slot (21)."

- XI. Compared to claim 1 of auxiliary request 2, in claim 1 of auxiliary request 3 the following feature has been added at the end:

"and wherein the fixed-type connection slot (21) is

embodied so that no expansion or enlargement occurs."

- XII. In claim 1 of auxiliary request 4 the feature added in auxiliary request 3 has been removed and the following feature added instead:

"and wherein in radial direction a certain space is left between the fixed-type connection slot (21) and the connection hole (31) in which the fixed-type connection slot (21) exists."

- XIII. In the present decision, reference is made to the following document:

D1: EP-A-0 799 926.

- XIV. The appellant's arguments can be summarised as follows.

The opposition division's interpretation of claim 1 was far too narrow. Claim 1 did not exclude that the structural features required for the function of one of the two defined types of connection slots could be provided additionally on the respective other type of connection slot (referred to as "hybrid connection slot" in the following). The description also did not provide any indication that this was excluded. A connection system comprising two such hybrid connection slots was known from D1. Since no difference in terms of structural and functional features existed between the claimed subject-matter and the system of D1, the subject-matter of claim 1 did not involve an inventive step.

The auxiliary requests should not be admitted into the proceedings since they could and should have been filed at the latest in reply to the appeal grounds. The case

had not changed since the filing of the appeal grounds.

The amendments in claim 1 of auxiliary requests 1 to 3 did not add any structural limitation compared to the system known from D1. Moreover, the features added in claim 1 of auxiliary requests 3 and 4 were taken in isolation from the description, contravening thereby also the requirement of Article 123(2) EPC at least.

XV. The respondent's arguments can be summarised as follows.

Article 69(1) EPC had to be taken into account when interpreting the claim, since the scope of protection had to be considered. The skilled person would then have understood that the two connection slots defined in claim 1 each performed individual and separate functions in order to achieve a number of advantages over the prior art. The skilled person would thus have understood that these could not have been achieved with the hybrid-type connection slots known from D1.

The amendments in claim 1 of auxiliary requests 1 to 4 each served to more clearly define that the two types of connection slots were different and separate parts, i.e. two separate slots with different dedicated functions in order to more clearly distinguish the claimed connection system from D1.

Basis for the additional features added to claim 1 of each of auxiliary requests 3 and 4 was in paragraphs 12 and 11 respectively of the published application underlying the patent.

Reasons for the Decision

Main request

1. Article 100(a) EPC in combination with Article 56 EPC
 - 1.1 As a preliminary remark it should be noted that the term "slot" as used in the patent and also in the present decision has a rather unconventional meaning, designating a generally elongated cylindrical and tubular component projecting from the tub and not a slot within its normal meaning.
 - 1.2 In the notice of opposition, the only opposition ground raised against the patent was lack of inventive step, Article 100(a) EPC in combination with Article 56 EPC. With its grounds of appeal, the appellant argued that the subject-matter of claim 1 lacked novelty in view of D1. Despite being a fresh ground of opposition, which could not be examined without the explicit consent of the patentee, lack of novelty may nevertheless be examined in the context of a decision on inventive step, as was decided by the Enlarged Board of Appeal in its decision G 7/95, OJ 1996, 626. The respondent also did not contest this.
 - 1.3 Using the terminology of claim 1 and reference numerals from D1, D1 discloses in Figures 6 and 7 in combination with column 4, lines 23 to 49, a connection system of and between the tub (3) and the balance weight (1) in washing machines comprising at least one expanding-type connection slot (the branched portion 14 on one of the identically constituted two bodies 7) for avoiding the lateral displacement of the tub (3) with respect to the balance weight (1) and at least one fixed-type connection slot (the circumferentially closed end

portion opposing the branched portion of the respective second body 7) for avoiding the axial displacement of the tub (3) with respect to the balance weight (1), so that both connection slots are provided on the tub section (each connection slot being joined to it by a pair of parallel fillets, "aletas" 8, to the tub 3, see column 4, lines 23-29) where the balance weight (1) is to be fastened; said expanding-type connection slot (branched portion 14 on one of the identically constituted bodies 7) having a cylindrical form and a hole (continuation of hole 12) on its central axis to introduce a first connection or fixation means (screw, see column 4, lines 43-49) therein, and comprising at least one cleavage (grooves 13) on itself starting from said hole and extending outwardly in order to increase its external diameter while said connection means (screw) is assembled into said hole (i.e. continuation of hole 12); and said fixed-type connection slot (the circumferentially closed end portion opposing the branched portion of the respective second body 7) having a cylindrical form and a hole (12) on its central axis to introduce a second fixation or connection means therein (since there are two bodies 7, each receiving a screw for fixation, each of these represents a first or second fixation or connection means respectively).

All features of claim 1 are thus known from D1.

- 1.4 The respondent disputed this conclusion arguing essentially that claim 1 defined two separate connection slots, each having a dedicated single function, providing thereby superior properties in view of their long-term resistance against a slackening of the connection between the balance weight and the tub due to the vibrations during use. The Board's finding

is however not altered by the respondent's argument. No structural or functional feature is defined in the claim which would exclude the structural features of one type of connection slot, for example the at least one cleavage of the expanding-type slot, being additionally provided also on the other type of the connection slot, i.e., in the chosen example, on the fixed-type connection slot. Since the claim does not exclude such a kind of hybrid connection slot, the subject-matter of claim 1 cannot be distinguished from such a slot as known from D1.

With reference to Article 69(1) EPC, the respondent argued that when taking into account the description and the Figures of the patent, the skilled person would have understood that each type of connection slot was meant to perform a single dedicated function only. However, even assuming, in favour of the respondent, that Article 69(1) EPC were of relevance when interpreting the wording of the claim for the purpose of examining (novelty and) inventive step - which the Board anyway does not accept - the Board would not arrive at a different finding. There is no definition or statement contained in the patent which would lead the skilled person to understand that the two types of connection slots are mutually exclusive and can or should not be integrated in a hybrid connection slot. It appears rather to be quite the contrary, since the function of the two slots is not at all exclusive. For example, in regard to the preferred embodiment of the expanding-type connection slot, it is stated in column 4, lines 54-58, that the laterally outward expanding portions also avoid (at least to a certain extent) axial movement of the balance weight against the tub and therefore perform to some extent the function of the fixed-type connection on the expanding-type

connection slot. A mutually exclusive distinction between these two slots, even based on the description, cannot therefore be ascertained. The figures also do not serve as a basis for excluding that the two functions could be present on a single slot. Similarly, as in the above-mentioned passage in column 4, a comparison of Figures 6 and 7 suggests that, to a certain extent, radial expansion of the slot occurs and thereby the function of the expanding-type connection slot is also present in the fixed-type connection slot.

Whether the preferred embodiment of the connection slots disclosed in the patent provides certain advantages compared to the connection system of D1 is irrelevant in the absence of structural features defined in the claim which clearly distinguish the two systems from each other.

- 1.5 In the absence of any difference between the subject-matter of claim 1 and the connection system known from D1, the Board concludes that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC), prejudicing consequently maintenance of the patent as granted.

Auxiliary requests 1 to 4

2. Auxiliary requests 1 to 4 were filed after the time limit for filing the response to the appeal grounds of the appellant (Article 12(1) and (2) RPBA) and therefore constitute an amendment to the respondent's case. According to Article 13(1) RPBA, any amendment to a party's case 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.

In order to be in line with the requirement of procedural economy, amendments should be *prima facie* allowable in the sense that they at least overcome the objections raised against previous requests without giving rise to any new ones.

3. Auxiliary requests 1 to 3

3.1 Irrespective of the issue as to whether these requests should be admitted into the proceedings, the Board anyway finds that none of these auxiliary requests meets the requirements of the EPC for the following reasons.

3.2 The feature "wherein the expanding-type and fixed-type connection slots (24, 21) are used together on the same tub (20)" added to claim 1 of auxiliary request 1 renders its subject-matter unclear within the meaning of Article 84 EPC. It is in particular not clear what further structural limitation is implied. It is also redundant in view of the immediately preceding feature, which already defines that both connection slots are provided on the tub section where the balance weight is to be fastened, as a result of which the two slots are inherently used together on the same tub.

3.3 In addition to this unclear feature, the features of granted dependent claims 2 and 3 have been appended to granted claim 1 in auxiliary request 1. Accordingly, the two connection slots are introduced into respective holes on the balance weight in their assembled form. This is however also the case in D1 (see the two recesses or "decreases" 9). Irrespective of the above

clarity deficiency, which is also present in all other auxiliary requests and would therefore on its own already prejudice maintenance of the patent with the claims of any of those requests, the Board finds that the amendments to claim 1 in auxiliary request 1 introduce no structurally limiting feature which would allow its subject-matter to be distinguished from the connection system of D1. The respondent also did not argue, in view of the above given interpretation of granted claim 1, that a distinguishing structural limitation compared to D1 was implied by the added features. The Board thus concludes that the subject-matter of claim 1 of auxiliary request 1 also lacks an inventive step (Article 56 EPC).

3.4 The same conclusion (lack of inventive step, Article 56 EPC) is reached in regard to claim 1 of auxiliary request 2. In addition to the amendments present in claim 1 of auxiliary request 1, the features of granted claim 4 have been introduced into claim 1. The connection means in the form of the screws introduced into the bodies 7 in D1 are also structured to exert an axial ("pulling") force on the balance weight in the fixed-type connection slot of D1, so that still no difference in terms of the defined structural features can be recognised. Also in regard to this feature, and also in view of the above given interpretation of granted claim 1, the respondent did not argue that a distinguishing feature was present or implied.

3.5 The feature introduced in claim 1 of auxiliary request 3, in addition to those added in auxiliary request 2, results in subject-matter which contravenes at least the requirement of Article 123(2) EPC. The feature is taken from the description of the preferred embodiment of the connection system and can be found in column 5,

lines 12 to 14 of the published application underlying the patent in suit. However, and as argued by the appellant, the feature is disclosed only in combination with other features of the connection system, such as a screw-like fastening means rather than merely an unspecified fastening means, and which screw-like means had a particular function in the preferred embodiment of the particular connection system described. The respondent did not indicate any passage of the description from where it could be concluded that the feature could be isolated from the other features of the embodiment. As to the respondent's argument that the screw was implicitly defined in claim 1 so that it did not need to be added, the Board cannot find any wording in it which would imply such a limitation to the (first or second) fixation or connection means. The subject-matter of claim 1 thus extends beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC.

3.6 It follows that none of auxiliary requests 1 to 3 meets the requirements of the EPC, prejudicing therefore maintenance of the patent with the claims of any of these requests.

4. Auxiliary request 4

4.1 This auxiliary request was not admitted into the proceedings for the following reasons.

4.2 The Board acknowledges that it was indeed for the first time throughout the entire proceedings before the EPO that the originally filed and granted subject-matter was considered to lack an inventive step by a deciding body of the EPO, as also argued by the respondent. However, the respondent had the opportunity to file

amendments, which it did after the Board's negative preliminary opinion on its main and sole request. The respondent was also given a further opportunity during the oral proceedings to consider its requests, after having been made aware *inter alia* of the objection under Article 123(2) EPC against auxiliary request 3.

The respondent chose to maintain its auxiliary request 4.

- 4.3 In auxiliary request 4, the feature added previously in claim 1 of auxiliary request 3 was deleted and replaced by a different feature. Although somewhat similar to the deleted feature in terms of its intended purpose, this feature is also taken from the description where it is disclosed only in the context of (amongst other features of that embodiment), a screw as a specific fixation or connection means of the connection system (see col. 2, lines 12-18 of the published application underlying the patent). The amendment would thus not be apt even to overcome the Article 123(2) EPC objection raised against claim 1 of the previous request, so that the amendment is not *prima facie* allowable in the sense set out above (see point 2).
- 4.4 Taking into account all the circumstances of the case, the Board therefore exercised its discretion according to Article 13(1) RPBA not to admit auxiliary request 4 into the proceedings.
5. In the absence of any request which meets the requirements of the EPC, the patent has to be revoked (Article 101(3)b) EPC).

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:



M. H. A. Patin

M. Harrison

Decision electronically authenticated