BESCHWERDEKAMMERN PATENTAMTS

BOARDS OF APPEAL OF OFFICE

CHAMBRES DE RECOURS DES EUROPÄISCHEN THE EUROPEAN PATENT DE L'OFFICE EUROPÉEN DES BREVETS

Internal distribution code:

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

Datasheet for the decision of 25 June 2019

Case Number: T 1629/15 - 3.2.06

Application Number: 08022170.8

Publication Number: 2034082

D06F33/02, D06F39/00 IPC:

Language of the proceedings: EN

Title of invention:

Washing machine using steam and method for controlling the same

Patent Proprietor:

LG Electronics Inc.

Opponent:

Electrolux Appliances Aktiebolag

Headword:

Relevant legal provisions:

EPC Art. 123(2) RPBA Art. 13(1)

Keyword:

Amendments - extension beyond the content of the application as filed (yes)

Late-filed auxiliary requests - request clearly allowable (no) - diverging versions of claims - admitted (no)

Decisions cited:

G 0002/10, T 0860/00, T 1107/06, T 2619/11

Catchword:



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 1629/15 - 3.2.06

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

Appellant: Electrolux Appliances Aktiebolag

(Opponent) St Göransgatan 143 105 45 Stockholm (SE)

Representative: Electrolux Group Patents

AB Electrolux Group Patents

105 45 Stockholm (SE)

Respondent: LG Electronics Inc.

(Patent Proprietor) 20, Yoido-dong

(Patent Proprietor) 20, Yoldo-dong Youngdungpo-gu

Seoul 150-721 (KR)

Representative: Ter Meer Steinmeister & Partner

Patentanwälte mbB Nymphenburger Straße 4 80335 München (DE)

Decision under appeal: Interlocutory decision of the Opposition

Division of the European Patent Office posted on

9 June 2015 concerning maintenance of the European Patent No. 2034082 in amended form.

Composition of the Board:

Chairman M. Hannam Members: T. Rosenblatt

E. Kossonakou

- 1 - T 1629/15

Summary of Facts and Submissions

- I. The appellant (opponent) filed an appeal against the interlocutory decision of the opposition division, posted 9 June 2015, in which the opposition division found that European patent No. 2 034 082 in an amended form met the requirements of the EPC.
- II. With its appeal grounds the appellant contested inter alia the finding of the opposition division that the subject-matter of amended claim 1 met the requirements of Article 123(2) EPC. In this respect the appellant disputed inter alia that the combination of features already defined in the granted claim was disclosed in the application as filed.
- III. Together with its reply to the appeal grounds, the respondent (patent proprietor) requested to reject the appeal, or auxiliarily to maintain the patent in amended form according to auxiliary requests 1 to 5 corresponding to auxiliary requests 1 to 5 submitted before the opposition division on 2 January 2014, or according to auxiliary requests 6 to 12 submitted with the reply to the appeal grounds, or according to auxiliary requests 13 to 15 corresponding to auxiliary requests 6 to 8 as filed on 2 January 2014.
- IV. The Board issued a summons to oral proceedings with a subsequent communication containing its provisional opinion, and which stated inter alia that the subject-matter of claim 1 of the respondent's main request appeared not to fulfil the requirement of Article 123(2) EPC. It further indicated that the amendments made by way of the claims of any of the auxiliary requests 1 to 15 would also not appear to overcome the

- 2 - T 1629/15

deficiency.

- V. By letter dated 7 June 2019 the respondent submitted new auxiliary requests 7 to 12.
- VI. Oral proceedings before the Board of Appeal were held on 25 June 2019, in the course of which the respondent withdrew auxiliary requests 1 to 12 and 14 and submitted new auxiliary requests 1 to 5.
- VII. The appellant requested that the decision under appeal be set aside and the European patent No. 2 034 082 be revoked.
- VIII. The respondent (patent proprietor) requested that the appeal be dismissed (main request) or that the patent be maintained according to
 - one of auxiliary requests 1 to 5 filed in the oral proceedings before the Board or
 - one of auxiliary requests 13 or 15 originally filed in opposition proceedings on 2 January 2014 as auxiliary requests 6 and 8.
- IX. Claim 1 considered by the opposition division to meet the requirements of the EPC, corresponding to the respondent's main request, has the following wording:
 - "A washing machine and/or drying machine with a steam generator (100) selectively supplying steam into a drum, comprising:
 - a course select part (420) to allow a user to select a course;
 - a controller (440) configured to operate a corresponding course according to the course selected through the course select part (420); characterized by

- 3 - T 1629/15

a steam adjust part (416) provided to select at least one factor of steam generation by a user for adjusting the at least one factor; and an indicator (422) for alerting a user, which course is a steam course capable of using steam."

X. Amended claim 1 of auxiliary request 1 reads as follows (emphasis in bold type of the amendments compared to claim 1 of the main request added by the Board):

"A washing machine machine (sic) with a steam generator (100) selectively supplying steam into a drum, comprising:

a course select part (420) to allow a user to select a wash course;

a steam select part (430) for a user to select whether steam washing is to be operated;

a controller (440) for controlling the steam generator based on a wash course selected at the course select part and a signal selected from the steam select part, the controller being configured to operate a corresponding wash course according to the wash course selected through the course select part (420); characterized by

a steam adjust part (416) provided to select **various** factor**s** of steam generation by a user for adjusting the **various** factor**s**; and

an indicator (422) for alerting a user, which wash course among the course select part is a steam wash course capable of using steam."

XI. In addition to the amendments in auxiliary request 1, in amended claim 1 of auxiliary request 2 the expression "capable of using steam" at the end of the claim is replaced by "for which using steam is - 4 - T 1629/15

selectable".

- XII. In addition to the amendments in auxiliary request 2, in amended claim 1 of auxiliary request 3 the two instances of the expression "various factors" in the characterising portion of the claim are replaced by "at least one of a steam starting time and an amount of steam" and "same", respectively.
- XIII. In addition to the amendments in auxiliary request 3, in amended claim 1 of auxiliary request 4 the following feature is added at the end of the claim:

"wherein the controller is configured to control the steam generator to generate steam only in case that the selected wash course is a predetermined steam wash course".

XIV. In amended claim 1 of auxiliary request 5 the previously added feature of auxiliary request 4 is replaced by the feature:

"wherein the steam select signal is not transmitted to the controller once the selected wash course is not a predetermined steam wash course".

XV. Compared to auxiliary request 5, in claim 1 of auxiliary request 13, the previously added feature "a steam select part (430)...", as well as the previously added feature at the end of the claim, "wherein the steam select signal ... not a predetermined steam wash course" are removed.

Moreover, the feature in the preamble of claim 1 defining the controller is amended to read

- 5 - T 1629/15

"a controller (440) configured to operate a corresponding wash course according to the wash course selected through the course select part (420) and to selectively operate the steam generator after judging whether the wash course inputted in the course select part can perform steam washing and whether a steam wash is selected in case that the inputted wash course can perform steam washing".

Also the feature "steam starting time and an amount of steam" in the characterising portion is replaced by the feature "steam supply start/stop time, steam supply amount and steam supply time".

XVI. Claim 1 of auxiliary request 15 reads:

"A washing machine with a steam generator (100) selectively supplying steam into a drum, comprising: a water supply path (200) connected with the steam generator (100), the drum and a water source, wherein water supply valves (310) and (320) are provided each on the water supply path (200) for selectively opening/closing the water supply path (200), at least one thereof controlling to supply wash water into the steam generator (100),

- a steam path (500) connected with the steam generator (100) for supplying steam generated in the steam generator (100) into the drum, and
- a control assembly (400), including:
- a course select part (420) to allow a user to select a wash course;
- an option select part 410 for selecting particular control of each wash course;
- a steam select part (430) for a user to select operation of the steam generator; and a controller (440) configured to operate a

corresponding wash course according to the wash course selected through the course select part (420) and to control the steam generator based on both the wash course selected at the course select part and a steam select signal selected from the steam select part and to control the water supply valve provided for controlling water supply into the steam generator once steam washing is selected through the steam select part;

a steam adjust part (416) provided to select at least one of steam supply start/stop time, steam supply amount and steam supply time by a user for adjusting the same; and

an indicator (422) for alerting a user, which wash course among the course select part is a steam wash course capable of using steam."

XVII. The arguments of the appellant may be summarised as follows.

Main request

The subject-matter of amended claim 1 extended beyond the content of the application as filed because a drying machine with the features specified by claim 1 was not disclosed. The entire application related consistently to washing machines using steam in wash courses, but nothing was disclosed regarding the use of steam in a drying function. Moreover, the combination of the steam adjuster part with the remaining features of claim 1 was not disclosed in this generality for a washing machine. The passages cited by the respondent from the general part of the description as well as from the part relating to the detailed embodiments had no clear relationship, these rather concerning several different embodiments. The features of claim 1 were

- 7 - T 1629/15

taken out of their respective context in the detailed embodiments.

Auxiliary requests 1 to 5, 13 and 15

The subject-matter of the respective amended claims 1 of these requests had no basis in the alternative passages indicated by the respondent. In regard to auxiliary request 15, the claim was based seemingly on the embodiment shown in Figure 3. This embodiment comprised further features, such as the displayer 450 and the indicator being part of the course select part, which were not included in claim 1.

XVIII. The arguments of the respondent may be summarised as follows.

Main request

The "gold standard" for the examination of the requirement of Article 123(2) EPC did not require literal support of the amendments in the application as filed. The content of the application as a whole had to be considered, taking into account also the implicit content understood by the skilled person. The skilled person had not only the required technical knowledge but had also the knowledge of a patent practitioner on the drafting of patent applications and consequently on how to reasonably interpret the content of an application, which in the present case relied on original claim drafting as required for USapplications. The principles of the case law developed in T 1107/06 and T 2619/11 had also to be considered. Assessment of the whole content of the application required also to take into account the objectives underlying the application. From the objectives

- 8 - T 1629/15

formulated in paragraphs 9, 27 or 35, it became clear to the skilled person that the invention underlying the application focused on the operation of the steam generator for the purpose of preventing its malfunction due to erroneous selection of steam. From the specific reference in paragraph 82, understood in the light of the whole content of the application, in particular the objectives set out previously, the skilled person would have concluded that the invention was also directed to drying machines, so that drying machines with the corresponding features were equally disclosed in the application. The application as filed comprised three generic disclosures of washing machines in paragraphs 10, 22 and 23. Paragraph 16 disclosed the steam adjust part as an aspect, or preferred embodiment, of the generic washing machines. No contradictions arose from this combination. According to T 1107/06 the combination of the features from paragraphs 16 and 23 was thus implicitly disclosed. Further also paragraphs 96 and 108 disclosed this combination of features, according to the principles developed in T 2619/11.

Auxiliary requests 1 to 5

The auxiliary requests addressed essentially the same subject-matter as that in the previously submitted and now abandoned auxiliary requests and thus did not introduce any new subject-matter. The subject-matter of the respective claims was consistently narrowing down, thus the requests were convergent. The amendments addressed furthermore the issues considered in the preceding discussions of the main request.

Basis for amended claim 1 of auxiliary request 1 was to be found in paragraphs 10, 16 and 21 of the application as filed. The further amendments of claim 1 of the

- 9 - T 1629/15

other auxiliary requests were found in the following passages of the application as filed:

- for auxiliary request 2 in paragraphs 12, 59 and 60,
- for auxiliary request 3 in paragraph 62,
- for auxiliary request 4 in paragraphs 11 and 51,
- for auxiliary request 5 in paragraphs 52 and 24.

Auxiliary requests 13 and 15

These auxiliary requests were filed with the reply of the appeal grounds, so their admittance could not be an issue.

Convergency with the preceding auxiliary requests 1 to 5 was not required since none of these requests was admitted, so that the subject-matter of amended claim 1 of auxiliary request 13 was convergent with respect to the main request. Moreover, the claim wording implied the presence of the steam select part.

Basis for claim 1 of auxiliary request 13 was granted claim 1 together with paragraphs 22 (alternatively paragraph 56) and 79, or, in the alternative, paragraph 22 combined with paragraphs 16, 21 and 62. Moreover, paragraphs 10 to 27 would be understood by the skilled person to constitute a summary of the invention, exposing the different options for a washing machine for solving the underlying objectives. The skilled person was not prevented to choose from the different options and could therefore combine the respective features with the generic washing machine.

Amended claim 1 of auxiliary request 15 was based on the disclosure in paragraphs 10, 16, 21, 36, 39, 19, 14 and 79.

- 10 - T 1629/15

Reasons for the Decision

Main request - Article 123(2) EPC

1. The basic principle when examining whether the requirement of Article 123(2) EPC is met, is to be found in the jurisprudence of the Enlarged Board of Appeal which was summarised and confirmed in its decision G 2/10 (OJ EPO 2012, 376, Reasons 4.3).

Applied to the present case, it has to be established whether the amended subject-matter is directly and unambiguously derivable by a skilled person, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the application as filed (i.e. description, claims and figures; n.b. reference is made here and in the following to the published application).

The Board accepts the respondent's argument that an explicit or literal disclosure is not necessarily required for a feature or a combination of features to be derivable. The implicit disclosure encompasses what any person skilled in the art would consider necessarily implied in the patent application as a whole (see e.g. T 860/00).

2. It has not been argued that the subject-matter of amended claim 1 was disclosed in the originally filed claims and the Board of its own motion does also not consider this to be the case. Rather the respondent submitted that it derives directly and unambiguously from paragraph 23 in combination with paragraph 16, or in the alternative from paragraphs 96 and 108.

- 11 - T 1629/15

- 2.1 Paragraphs 16 and 23 belong to the general part of the description. It is therefore necessary to consider the context of these paragraphs and their meaning within the application as a whole.
- 2.2 Following an indication of the objectives underlying the application in paragraph 9 (providing a washing machine using steam which has improved convenience and improved washing performance), paragraph 10 discloses a first ("generic") embodiment of a washing machine in accordance with the purpose of the invention ("...and in accordance with the purpose of the invention, as embodied and broadly described herein, a washing machine with..."). Paragraph 10 lists the features of this first "generic" embodiment but does not disclose a washing machine comprising the features defined in the characterising portion of claim 1, i.e. a "steam adjust part" and an "indicator". Paragraphs 11 to 21 then describe further features. The skilled person would understand these features to relate to the machine disclosed in paragraph 10. It remains, however, unclear from the wording of these paragraphs whether the features mentioned therein are optional features or whether they are features of the first embodiment of paragraph 10. Only very few of the features in these paragraphs are explicitly introduced by the term "preferably" (see for example paragraph 12, "[m]eanwhile, a steam wash select displayer is further provided... Preferably the steam wash select displayer includes..."). The wording of these paragraphs 11 to 21, and consequently the potentially intended combinations of features of a washing machine mentioned therein, are thus ambiguous.
- 2.3 According to paragraphs 22 and 23, other "aspects" of the invention provided in the application are disclosed

- 12 - T 1629/15

in the form of two different ("generic") embodiments of washing machines. The three "generic" embodiments of a washing machine according to paragraphs 10, 22 and 23 have some but not all features in common.

- 2.4 Paragraph 23 is considered by the respondent to represent the basis for present claim 1 and indeed discloses a washing machine having essentially the features as defined in claim 1 except for the feature "steam adjust part".
- 2.5 The feature "steam adjust part" in the characterising portion of claim 1, besides not being disclosed in paragraph 23, is also not disclosed in paragraphs 10 or 22, nor is it mentioned in any of the paragraphs 24 to 28 of the general part of the description. It is only disclosed in paragraph 16, in which it is referred to as "a further aspect of the present invention". As mentioned before, with the normal reading of the description, the features mentioned in paragraphs 11 to 21 would be understood to relate to the preceding disclosure of a washing machine in paragraph 10. Therefore also the feature "steam adjuster part" mentioned in paragraph 16 would have been understood by the skilled person to relate to this first generic embodiment of a washing machine, which comprises different features to those defined in present claim 1.

Nothing in paragraph 16 or in the following paragraphs, including paragraph 23, establishes a direct and unambiguous link between these two different "aspects" of the invention.

2.6 Although a skilled person may imagine many technically non-contradictory combinations of any of the three "generic" washing machines of paragraphs 10, 22 or 23

- 13 - T 1629/15

with the other features mentioned in the intermediate passages, such considerations lie beyond a direct and unambiguous disclosure. They do not belong to an implicit disclosure either, since such combinations do not necessarily arise from the content of these passages, neither from these passages alone nor in the context of the whole application.

- 2.7 The combination of these features is also not necessarily implied by the objectives set out in paragraph 9 or by the advantages achieved as summarised in paragraph 27. It would not be apparent to the skilled person that the features of a washing machine according to the different aspects mentioned in the introductory part of the description, especially the steam adjust part and the indicator, together with the features in the preamble of the claim necessarily provide for improved convenience, improved washing performance or prevent malfunctions. In the Board's view, and as also argued by the appellant, their selection constitutes nothing but an arbitrary choice among the many potential feature combinations of a washing machine for which there is no direct and unambiguous disclosure in this generality.
- 2.8 The disclosure in paragraphs 96 and 108, similarly to that in paragraphs 16 and 23, belongs to a section entitled "Further Embodiments". The paragraphs are drafted in claim-like manner. Again a direct and unambiguous link between the features of paragraphs 96 and 108 is missing.
- 2.9 In its written arguments the respondent had also relied upon the disclosure of paragraphs 62 to 66. These paragraphs however relate to the description of the preferred embodiments of a washing machine. The steam

- 14 - T 1629/15

adjust part and an indicator are only disclosed there in combination with further features rather than in the general form as defined in amended claim 1. These passages, even taking into account the general part of the description, therefore do not disclose the subjectmatter of amended claim 1.

- 2.10 Also the respondent's arguments based on the principles set out in decisions T 1107/06 and T 2619/11 do not alter the Board's conclusion.
- 2.10.1 In case T 1107/06 the Board took the view

"...that when there is a generic disclosure of the invention together with a specific disclosure of an illustrative or preferred embodiment falling under the generic disclosure, the skilled person will normally imply that all the other embodiments comprised in the generic disclosure without being mentioned specifically also form part of the invention. The non-exemplified or non-preferred embodiments are thus implicitly disclosed as the logical complement of the exemplified or preferred embodiments." (Reasons 46).

However this statement has to be read in its factual context, where the Board had to assess, after the introduction of a disclaimer into the claim, whether

"there is a clear and unambiguous disclosure of the subject-matter remaining in the claim" (Reasons 45).

The facts are thus clearly different from the present case, in which it has to be assessed whether features of different embodiments or aspects of the invention

- 15 - T 1629/15

are disclosed in combination in their claimed generality. Under the circumstances of the present case the determination of a "logical complement of the exemplified or preferred embodiment" (see above) is meaningless. The statement above relied upon by the respondent is thus not relevant for the present case.

2.10.2 The Board can also not see that its conclusion would be

"disproportionally directed to the structure of the claims as filed to the detriment of what is really disclosed to the skilled person by the documents as filed as directed to a technical audience rather than a philologist or logician, for which audience an attempt to derive information from the structure of dependent claims leads to artificial result",

as argued by the respondent by reference to decision T 2619/11 (see Catchword and Reasons 2.6) in regard to the present Board's reading of paragraphs 10 to 23 and 85 to 108.

In particular the Board cannot agree with the respondent that the statements in T 2619/11 would imply in case of US-style claim drafting, i.e. with several independent claims and with dependent claims generally dependent exclusively on the respective independent claim, similar to the wording in paragraphs 10 to 23 and 85 to 108 of the application underlying the present patent in suit, that in addition to all direct combinations resulting from the dependencies also all other technically non-contradictory combinations of features mentioned in the different dependent claims, without any explicit link to each other, had to be considered as disclosed to the skilled person. Nothing in decision T 2619/11 points to such a conclusion. To

- 16 - T 1629/15

the contrary, also in that decision the deciding Board applied the commonly accepted standard for a required direct and unambiguous disclosure. It considered in detail the whole content of the application and concluded that a combination of features not directly derivable from the original claims was nevertheless clearly and unambiguously derivable from other parts of the application (Reasons 2.6 to 2.8). This is in strong contrast to the present case where the Board could not find such a disclosure.

- 2.11 For the above reasons, the Board concluded that the subject-matter of claim 1 according to the appellant's main request extends beyond the content of the application as filed, contrary to Article 123(2) EPC.
- 2.12 In view of this conclusion it is not required to give further reasons concerning the other objections raised against the subject-matter of claim 1 in regard to the requirement of Article 123(2) EPC.

Auxiliary requests 1 to 5

- 3. Auxiliary requests 1 to 5 were filed at the oral proceedings before the Board, thus after the time limit for filing the response to the appeal grounds of the appellant (Article 12(1) and (2) of the Rules of Procedure of the Boards of Appeal, RPBA) and therefore constitute an amendment to the respondent's case.
- 4. 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.

- 17 - T 1629/15

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.

5. Claim 1 of auxiliary request 1 has been amended by the introduction of additional features which are based on paragraphs 10, 16 and 21 of the application as filed. In particular the amendments in the claim's preamble are based on paragraph 10, whereas the amendments to the features "steam adjust part" and "indicator" are based on wording in paragraphs 16 and 21. However, as already explained before (see point 2.2) the disclosure of paragraphs 11 to 21 is ambiguous in regard to the combination of features mentioned therein. Although the two features are mentioned as "further aspect[s] of the present invention" in paragraphs 16 and 21, absent any clear link between these passages they cannot be considered to derive directly and unambiguously in combination with each other from these paragraphs, neither explicitly nor implicitly, for the corresponding reasons as already set out in points 2.6, 2.7, 2.9 and 2.10 above. This conclusion remains valid even when taking into account the description of the "[f]urther [e]mbodiments" according to paragraphs 85 to 106.

Since the objection raised against the main request is not overcome by the amendment according to auxiliary request 1, this request is not *prima faci*e allowable and the Board consequently exercised its discretion not to admit this request into the proceedings (Article 13(1) RPBA).

- 18 - T 1629/15

6. For similar reasons, auxiliary requests 2 to 5 were also not admitted into the proceedings. The amendments to the respective claim 1 cannot change the conclusion reached above concerning auxiliary request 1. The further features added to the claim, based on additional paragraphs of the description indicated by the respondent, cannot alter the fact that the features taken from paragraphs 16 and 21 and combined with the features mentioned in paragraph 10 are not directly and unambiguously disclosed in combination either in this part of the application, nor in the other parts (see above point XVIII) relied upon by the respondent. Notably the respondent declined to present any additional arguments in defence of the auxiliary requests 2 to 5.

Auxiliary requests 13 and 15

- 7. Auxiliary requests 13 and 15 were filed with the grounds of appeal; yet, the filing of higher ranking auxiliary requests 1 to 5 during the oral proceedings before the Board introduced a change of the order of requests, which led to a change in the respondent's complete case, rendering their admittance also dependent on the discretion of the Board (Article 13(1) RPBA).
- 8. Compared to claim 1 of the main request, in claim 1 of auxiliary request 13 the function of the controller has been amended by features taken from paragraph 22 and the wording of the features defined in the characterising portion has been amended based on wording of paragraphs 79 and 23. In the oral proceedings the respondent argued that the basis for the amended claim 1 should be seen in the combination of paragraphs 22, 16, 21 and 62. The wording added to

- 19 - T 1629/15

the feature "steam adjust part" is effectively based on paragraph 79, and not 62; the features added from this paragraph are disclosed in relation to a further feature ("steam select part 430") which is not included in claim 1. Notwithstanding this new issue, which would itself have required further discussions, contrary to a prima facie allowable amendment, the Board does not accept that the outstanding objection from the previous auxiliary requests is prima facie overcome either, since the subject-matter is not directly and unambiguously derivable from another combination of the paragraphs of the general part of the description, starting from paragraph 22 instead of paragraph 23, in combination with some seemingly arbitrarily selected features taken from the description of the preferred embodiments (see paragraphs 62, 79).

The argument that the skilled person could choose freely from the options disclosed in the passages of the general disclosure and combine the respective features without anything preventing them from doing so, does not convince the Board for essentially the reasons given above, see points 2.2 to 2.10. The further amendments in the claim concerning the function of the controller do not affect this conclusion. The respondent also did not argue this to be the case.

The Board therefore exercised its discretion according to Article 13(1) RPBA not to admit auxiliary request 13 into the proceedings.

9. For similar reasons the Board also did not admit auxiliary request 15.

The Board cannot see that the objection raised against claim 1 of the respondent's main request (see point 2

- 20 - T 1629/15

above) or against the auxiliary requests 1 to 5 (see for example point 5) could be overcome by the addition of further features taken from paragraphs 14, 36, 39 and 79. Each of these paragraphs discloses further features of a washing machine without addressing the core of the outstanding objection, which is that all features are disclosed in paragraphs scattered throughout the description without there being any clear link between them from which the resulting combination could be directly and unambiguously derived.

It is further noted that the appellant in its letter dated 23 April 2019, point 4.10, objected to several features of claim 1 of this auxiliary request having been taken from the description of the preferred embodiments, in isolation from other features with which they were disclosed in combination, for example without specifying certain displayers and further features in relation to the indicator. In the communication setting out its preliminary opinion the Board referred to these objections of the appellant and had opined that auxiliary request 15 did not appear to remedy the outstanding objection (see points 2 and 4 of the Board's communication). Neither in its letter dated 7 June 2019 nor in the oral proceedings did the respondent address these issues.

The Board therefore concluded that claim 1 of auxiliary request 15 prima facie does not fulfil the requirement of Article 123(2) EPC and consequently exercised its discretion according to Article 13(1) RPBA not to admit this auxiliary request into the proceedings.

- 21 - T 1629/15

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. Hannam

Decision electronically authenticated