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**Datasheet for the decision
of 10 March 2020**

Case Number: T 0330/16 - 3.2.06

Application Number: 06011421.2

Publication Number: 1862581

IPC: D06F39/04, D06F37/42, D06F35/00

Language of the proceedings: EN

Title of invention:

Method for operating a domestic appliance, especially a home dryer or a washing machine, and domestic appliance

Patent Proprietor:

Electrolux Home Products Corporation N.V.

Opponent:

Miele & Cie. KG
Schutzrechte/Verträge

Headword:

Relevant legal provisions:

RPBA Art. 12(4)

Keyword:

Late-filed document - admitted (no)

Decisions cited:

Catchword:



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Case Number: T 0330/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 10 March 2020

Appellant:
(Opponent)

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Respondent:
(Patent Proprietor)

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Representative:

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 December 2015 concerning maintenance of the
European Patent No. 1862581 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
W. Ungler

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that European patent No. 1 862 581 in an amended form met the requirements of the EPC.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. The respondent (patent proprietor) requested that the appeal be rejected as inadmissible or dismissed as unallowable or, in the alternative, that the patent be maintained according to one of auxiliary requests 1 to 4.
- IV. The following document is relevant to the present decision:

D1 WO-A-03/057966

The following document, first filed with the appellant's grounds of appeal, is also relevant:

D10 EP-A-1 441 059
- V. With letter of 15 February 2019, the following additional objections were submitted for the first time by the appellant:
 - novelty in view of D10, and
 - inventive step, when starting from D1 and combining this with the technical teaching of D10.
- VI. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that D10 may

be held inadmissible under Article 12(4) RPBA 2007 (see items 2 and 2.1 of the communication). It also noted that all attacks on file relied upon D10 such that, if D10 were indeed held to be inadmissible, the appellant's attacks would fail (see item 2.2 of the communication).

- VII. With letter of 2 March 2020, the respondent filed a replacement auxiliary request 4.
- VIII. Oral proceedings were held before the Board on 10 March 2020, during which the respondent withdrew its objection to the admissibility of the appeal. At the close of oral proceedings, the requests of the parties were as follows:

The appellant requested that the decision under appeal be set aside and the European patent be revoked.

The respondent requested that the appeal be dismissed.

- IX. Claim 8 of the main request reads as follows (with feature annotation as used by the appellant):

M1 Method for operating a domestic appliance,
especially a home dryer (1) or a washing machine,
M2 which domestic appliance (1) comprises a steam
unit and a room (4) for treating textiles with steam
generated by the steam unit,
M3 wherein at least one action for protection of an
operator of the domestic appliance (1) is taken when an
interruption of an active program for treating textiles
with steam occurs so that the operator is not hurt by
the steam generated in the domestic appliance (1),
M4 wherein the action comprises at least partially
stopping the supply of steam to the room for treating

textiles,

- M5 characterized in that stopping the supply of steam to the room for treating textiles comprises
- M5.1 - closing a conduit (24) for supplying the room (4) for treating textiles or
 - M5.2 - at least partially depleting the steam unit of steam or
 - M5.3 - reversing the flux of the steam through the steam unit or
 - M5.4 - stopping the activity of a pump (21) adapted to supply water to the steam unit.

X. The appellant's arguments may be summarised as follows:

The subject-matter of claim 8 lacked novelty with respect to D10. It also lacked an inventive step when starting from D10 and combining this with either D1 or the general knowledge of the skilled person, or starting from D1 and combining this with the technical teaching of D10.

Despite having been filed for the first time with the grounds of appeal, D10 should be admitted since only after the oral proceedings before the opposition division and its written decision did the glaring importance of the pump in the claimed subject-matter become apparent. D10 was *prima facie* highly relevant to the novelty and inventive step of the subject-matter of claim 8 and for this reason should also be admitted.

XI. The respondent's arguments may be summarised as follows:

D10 should not be admitted. Claim 8 was unchanged from claim 10 as granted such that D10 could and should have been filed already before the opposition division.

Admitting D10 on appeal for granted subject-matter would amount to allowing a re-examination. In its reply to the opposition (see point 3.3, particularly the paragraph bridging pages 6 and 7) the patent proprietor had clearly argued that no pump was present in D1, so this had been the appropriate time to file D10.

Reasons for the Decision

1. *D10 - Admissibility*

1.1 D10 was filed for the first time with the appellant's grounds of appeal in order to question both novelty and inventive step of the subject-matter of claim 8. Under Article 12(4) RPBA 2007, the Board has the power 'to hold inadmissible facts, evidence or requests which could have been presented ... in the first instance proceedings'. It is thus presently necessary to establish whether, seen objectively, D10 could (and should) have already been presented in the opposition proceedings.

1.2 Claim 8 of the main request corresponds to claim 10 as granted. In the notice of opposition, the novelty of the subject-matter of claim 10 was objected to with respect to D1, as was the presence of an inventive step starting from D1 and combining this with a document D5 or with common general knowledge of the skilled person. In reply to the opposition (see the proprietor's letter of 6 March 2014 item 4.3), the proprietor argued that D1 clearly failed, even implicitly, to disclose a pump and the objections thus failed to deprive the subject-matter of claim 10 of novelty or inventive step.

- 1.3 In view of this, the appellant's argument on appeal, that the importance of the pump only became evident after the oral proceedings and the written decision of the opposition division, is not accepted. Already at an early stage of the opposition procedure (see point 1.2 above), the appellant had been presented with arguments indicating that D1 failed to disclose a pump. The opposition division's subsequent decision on this point simply states:
'D1 is completely silent with regard to a pump ...'. It is not evident how this factual statement of the opposition division in any way presented an interpretation of D1 which had previously not been on file and which could be seen as a defining moment in the appellant's understanding of the disclosure of D1.
- 1.4 The appellant had therefore been presented with all necessary arguments to suggest that an alternative document may have been required in order to successfully challenge the novelty and/or inventive step of the subject-matter of granted claim 10 already at an early stage of the opposition procedure. It was at this stage, therefore, that the appellant could and should have reacted in providing a suitable document to overcome this potential deficiency.
- 1.5 The appellant's further argument that D10 was *prima facie* highly relevant with respect to the subject-matter of claim 8 is not decisive in this case for the question of whether D10 should be held inadmissible under Article 12(4) RPBA 2007. The criterion of *prima facie* relevance is of importance under Article 13(1) RPBA 2020 when there has been a change made to the party's complete case on appeal. However, where the question of admissibility concerns whether the document could have been filed in the first instance proceedings

(i.e. consideration under Article 12(4) RPBA 2007), of importance are the procedural aspects of those proceedings and thus, seen objectively, whether the document could and should reasonably have been presented at that time, rather than the *prima facie* relevance of the document itself.

1.6 It thus follows, from points 1.1 to 1.4, that D10 could and should already have been filed before the opposition division. As a consequence the Board holds D10 to be inadmissible (Article 12(4) RPBA 2007).

2. *Novelty*

The sole objection to the novelty of the subject-matter of claim 8 is with respect to D10. In view of D10 being held inadmissible, the novelty objection requires no further consideration.

3. *Inventive step*

3.1 The sole inventive step attacks on file are:

D10 in combination with common general knowledge;
D10 in combination with the technical teaching of D1;
D1 in combination with the technical teaching of D10.

3.2 In view of D10 being held to be inadmissible, no objections of inventive step remain which can be considered. In the oral proceedings before the Board when specifically questioned regarding whether all its attacks relied on D10, the appellant accepted this to be the case.

4. Since no other objections remain which could prejudice the novelty and/or inventive step of the subject-matter

of claim 8 or any other claim, the main request is found allowable.

The appeal must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Magliano

M. Harrison

Decision electronically authenticated