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**Datasheet for the decision
of 23 January 2024**

Case Number: T 0330/22 - 3.4.01

Application Number: 13165973.2

Publication Number: 2800453

IPC: H05B6/06

Language of the proceedings: EN

Title of invention:

Hob and methods for operating such a hob

Patent Proprietor:

Electrolux Appliances Aktiebolag

Opponent:

E.G.O. Elektro-Gerätebau GmbH

Headword:

Selection of cooking zones / Electrolux

Relevant legal provisions:

EPC Art. 100(a), 54(2), 52(1), 56
RPBA 2020 Art. 11, 12(2), 13

Keyword:

Grounds for opposition - Lack of novelty and lack of inventive step in view of the same document - reasoning of lack of novelty sufficiently substantiated both grounds (yes)

Novelty - all requests (yes)

Amendments to the appeal cases considered (yes)

Inventive step - all requests (no)

Remittal - special reasons for remittal (no)

Decisions cited:

G 0007/95, T 0131/01, T 0597/07



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Case Number: T 0330/22 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 23 January 2024

Appellant: E.G.O. Elektro-Gerätebau GmbH
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 26 November
2021 rejecting the opposition filed against
European patent No. 2800453 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman P. Scriven
Members: A. Medeiros Gaspar
R. Winkelhofer

Summary of Facts and Submissions

- I. The Patent was opposed on grounds under Article 100(a) and 100(c) EPC. On EPO Form 2300, both novelty and inventive step were indicated as grounds under Article 100(a) EPC.
- II. Among others, the following documents were submitted as evidence:
- | | |
|----|-----------------------|
| D6 | DE 10 2004 059822 A1 |
| D7 | DE 20 2010 006 890 U1 |
| D8 | DE 101 56 777 A1 |
- III. The Opposition Division decided to reject the opposition. Inter alia, it:
- (a) held claim 1 of the patent to be new having regard to D6 or D7;
 - (b) decided to consider the inventive step objections to claim 1, brought forward by the opponent at the oral proceedings, starting from either D6 or D7, and combining it with D8, but found them not persuasive.
- IV. The opponent appealed this decision.
- V. In the section on lack of patentability (section: "C. Mangelnde Patentfähigkeit"), of the grounds of appeal, the opponent argued:

- (a) that claim 1 of the patent lacked novelty in view of D6 and of D7;
- (b) that the other claims of the patent either also lacked novelty in view of one or both of these disclosures, or lacked inventive step starting from either D6 or D7, taken in isolation or combined with other prior-art documents.

VI. Additionally, the opponent objected to all the auxiliary requests before the Opposition Division, although the contested decision was not based on them. Claim 1 of several of the auxiliary requests was, inter alia, argued to define subject-matter that did not entail an inventive step in view of either D6 or D7.

VII. Both parties requested oral proceedings.

VIII. In a communication under Article 15(1) RPBA, that accompanied a summons to oral proceedings, the Board informed the parties of its provisional opinion (Article 17(2) RPBA). In it, the Board indicated that, even if a difference were to be recognised between claim 1 of the patent and the disclosure of D6, it would not seem capable of contributing to an inventive step.

IX. In reaction, the opponent argued that claim 1 of the patent lacked an inventive step; and the proprietor requested the exclusion of any discussion on inventive step of claim 1 of the patent, and, furthermore, declared they did not consent to the introduction of this new ground of opposition.

- X. At the end of oral proceedings, the opponent requested that the decision be set aside and the patent revoked.
- XI. The proprietor requested that the appeal be dismissed (main request), or that the case be remitted to the Opposition Division, "should the Board of appeal come to the conclusion that the appeal as far as claim 1 as granted is concerned is founded" (auxiliary request 1), or that the patent be maintained on the basis of one of auxiliary requests 2 to 10 (filed before the opposition division and resubmitted in reply to the appeal), or on the basis of auxiliary request 11, submitted in reaction to the Board's preliminary opinion.
- XII. Claim 1 of the patent (main request) reads (reference signs omitted):

Hob comprising a cooking surface adapted to receive a number of pots, a user interface allowing a user to select a cooking zone associated to a pot and to fully adjust at least one operating parameter of the selected cooking zone with at least a single operating element common to all cooking zones, a pot detection unit adapted to detect the presence and non-presence of pots on the cooking surface, and a control unit cooperating with the pot detection unit and the user interface and adapted to control the function of commands received through the user interface, wherein the user interface is adapted to indicate to the user the presence of every pot of the number of pots on their

associated cooking zones and to indicate the user the actually selected cooking zone whose at least one operating parameter is adjustable through the user interface by the user and wherein in one operation mode the control unit is adapted to cause the selection of a certain cooking zone and to provide a corresponding indication on the user interface that the certain cooking zone is from now on selected, if a corresponding signal from the pot detection unit was received by the control unit that a temporal interruption of a presence of a pot on the certain cooking zone was detected.

- XIII. Claim 1 of auxiliary request 2 modifies the final conditional clause as follows (amendment underlined by the Board):

[...], if a corresponding signal from the pot detection unit was received by the control unit that a temporal interruption of a presence of a pot on the certain cooking zone within a predetermined time frame was detected.

- XIV. Claim 1 of auxiliary request 3 amends two sections of claim 1 of auxiliary request 2, so that the amended parts read (amendments underlined by the Board):

[...] to detect the presence and non-presence, of pots on the cooking surface, wherein a control unit is provided that is

adapted to process a corresponding sequence of signals from the pot detection unit, the control unit cooperating [...]

[...], if a corresponding sequence of signals from the pot detection unit was received by the control unit that a temporal interruption of a presence of a pot on the certain cooking zone within a predetermined time frame was detected.

- XV. Claim 1 of auxiliary request 4 amends two parts of claim 1 of auxiliary request 2, so that the amended parts read (amendments underlined by the Board):

[...] operating element common to all cooking zones and implemented as a +/- operating element, a pot detection unit [...]

[...], if a corresponding sequence of signals from the pot detection unit was received by the control unit that a temporal interruption of a presence of a pot on the certain cooking zone within a predetermined time frame was detected.

- XVI. Claim 1 of the auxiliary request 5 is identical to that of auxiliary request 2.

- XVII. Claim 1 of the auxiliary request 6 adds, at the end of claim 1 of auxiliary request 2:

[... was detected,] wherein the user interface comprises a number of confirmation elements corresponding to cooking zones through which a user can confirm the selection of a cooking zone, and wherein the user interface comprises a number of visual indication elements to indicate at least the actually selected cooking zone, wherein the visual indication element and confirmation element are respectively formed by one single element.

- XVIII. Claim 1 of the auxiliary request 7 modifies the condition defined at the end of claim 1 of the auxiliary request 2, as follows (amendment underlined by the Board):

[...], if a corresponding sequence of signals from the pot detection unit was received by the control unit that a temporal interruption of a presence of a pot on the certain cooking zone within a predetermined time frame was detected.

- XIX. Claim 1 of the auxiliary request 8 adds at the end of claim 1 of the patent:

[... was detected], wherein a predetermined timeframe is provided for the temporal interruption.

XX. Claim 1 of the auxiliary request 9 introduces the following amendments with regard to claim 1 of the patent (amendments underlined by the Board):

[...] *to fully adjust at least one operating parameter comprising the power settings and a switch off timer of the selected cooking zone with at least a single operating element common to all cooking zone and implemented as a +/- operating element, a pot detection unit [...]*

XXI. Claim 1 of the auxiliary request 10 is identical to claim 1 of the main request.

XXII. Claim 1 of the auxiliary request 11 introduces the following amendments with regard to claim 1 of the patent (amendments underlined or struck through by the Board):

[...] *to fully adjust ~~at least one~~ an operating parameter comprising the power settings and a switch off timer of the selected cooking zone with ~~at least~~ a single operating element common to all cooking zone and implemented as a +/- operating element, a pot detection unit [...]*
[...], if a corresponding signal from the pot detection unit was received by the control unit that a temporal interruption, comprising a duration of 1 to 10 seconds, preferably 2 seconds, of a presence of a

pot on the certain cooking zone was detected.

Reasons for the Decision

Background of the invention as described in the patent

1. The invention relates to cooking hobs and is directed to facilitating their operation (patent: [0001], [0002], and [0006]).
2. It is based on the recognition that the presence and absence of a pot on a cooking zone can be detected, and corresponding signals, or sequences of signals, can be processed by a control unit (patent: [0011]).
3. By recognising gestures like lifting, shifting, and sliding of pots, as selecting the relevant cooking zone, the operation of a hob can be made more intuitive (patent: [0013],[0014], and [0015]).

Main request: novelty in view of D6

4. D6 discloses hobs comprising a cooking surface, a user interface, a pot detection unit, and a control unit. The control unit cooperates with the pot detection unit and the user interface (D6: figure 1, [0029] to [0031]).
5. The user interface allows the user to select a cooking zone, and to adjust its heating power using a +/-

operating element that is common to all zones (D6: figure 1, [0015],[0021] last sentence, [0029]). An indication of the selection, or of a change in the operating status of a cooking zone, is provided by means of a respective light indicator (D6: [0017] and [0042]).

6. The proprietor argues that D6 does not disclose the user interface as being *adapted to indicate the user the presence of every pot of the number of pots on their associated cooking zone*, as defined in the claim.
7. However, according to paragraphs [0017] and [0042] of D6, an indication will be provided for every pot that is placed on a cooking zone. The claim does not define when the indications are to be provided, nor that they need be provided simultaneously. It therefore encompasses hobs that provide the indication when a pot is placed on its cooking zone, as disclosed in D6.
8. The pot detection unit of D6 detects the placement of a pot on a cooking zone, following which, heating of that zone is made possible (D6: [0031], first and second sentences). Additionally, the cooking zone is selected and an indication of the selection is provided (D6: [0042]).
9. The proprietor's argument that D6 only disclosed the enabling of heating for the cooking zone, overlooks paragraph [0042] of D6.
10. Claim 1 of the patent further defines that, *in one operating mode, the control unit is adapted to cause a selection of a certain cooking zone and provide a corresponding indication on the user interface that the certain cooking is from now on selected, if a*

corresponding signal from the pot detection unit was received by the control unit that a temporal interruption of a presence of a pot on a certain cooking zone was detected.

11. The parties agree that detection of a temporal interruption of the presence of a pot implies a particular sequence of events in time, namely, a pot's presence, followed by a pot's absence, followed by another presence.
12. This seems, indeed, to be the meaning of the term *temporal interruption of a presence* given in the patent (patent: [0015], [0016]).
13. What is disputed is whether or not the hob of D6 is adapted to detect such a *temporal interruption of a presence of a pot on a cooking zone*, and to react by causing selection of the cooking zone, and indication of the selection.
14. As argued by the opponent, the pot detection unit of the hob of D6 is adapted to detect both presence and absence of a pot on a cooking zone. Consequently, it is also adapted to detect transitions between presence and absence.
15. However, the detection of a temporal interruption of a presence requires not only detection of single transitions, but detection of a specific sequence of transitions within a certain time period, namely: from presence to absence followed by from absence to presence.
16. As correctly argued by the proprietor, paragraph [0042] of D6 discloses that the hob selects a cooking zone and

indicates that selection, if placement of a pot on a cooking zone is detected. Such a detection is, however, not a detection of an interruption of the presence of a pot.

17. Since the hob of D6 is not adapted to detect an interruption in the presence of a pot, it is also not adapted to react to such detection.
18. The opponent further argues that lifting and replacing a pot on a cooking zone, would, according to paragraph [0042] of D6, result in the selection of that cooking zone and in the provision of an indication accordingly in the user interface.
19. This is correct, but such a renewed selection would occur in reaction to the detection of a placement of a pot, and not in reaction to the detection of a temporal interruption.
20. It is noted, additionally, that paragraph [0043] discloses that a renewed selection, of a cooking zone with a pot already placed on it, can be done by the user either touching the pot or sliding it. However, neither of those gestures involves interrupting the presence of the pot on the cooking zone.
21. Claim 1 of the main request differs, then, from the disclosure of D6 by the feature recited under point 10., above.

Main request: consideration of inventive step in view of D6

22. The proprietor objected to the consideration of the question of inventive step of claim 1 in view of D6,

arguing that, in their grounds of appeal, the opponent only contested the Opposition Division's finding on novelty. Hence, the question of inventive step of claim 1 was not part of the appeal proceedings. Additionally, the proprietor declared that they did not consent to the introduction of a fresh ground for opposition.

23. However, the opponent's argument that claim 1 lacks novelty is, implicitly, also an argument that it lacks inventive step. In effect, in the absence of an identifiable difference, no inventive step can be recognised (G 7/95 *Fresh grounds for opposition*, OJ EPO 1996, 626, reasons 7.2; T 131/01, OJ EPO 2003, 115, reasons 3.1; T 597/07, reasons 5). Further substantiation was not necessary to make lack of inventive step a ground of opposition in the case.
24. A later submission, alleging that a certain difference with regards to the same prior art was obvious, does not introduce a fresh ground for opposition. It just introduces a new allegation of fact, namely the allegation that the difference is obvious, supported by new arguments, on the basis of the same prior art. Its consideration does not require permission of the proprietor, but is at the discretion of the Board under Article 13 RPBA.
25. It is true that the opponent, in their statement of grounds, only contested the finding of a difference by the Opposition Division, but did not contest the further finding of the Opposition Division that the difference that was identified contributed to an inventive step. They could and should have done so, if they wanted to rely on it later in the appeal proceedings (Article 12(2) RPBA).

26. It is, however, also true that, they argued that several of the other claims of the patent (including claims dependent on claim 1) and that claim 1 of several of the auxiliary requests, lacked inventive step, starting from the same disclosure of D6.
27. When assessing inventive step of those claims, the Board would have to look at all points of novelty. One of those would be the difference identified above with regard to claim 1 of the patent.
28. Not considering the parties inventive step arguments, when assessing claim 1 of the patent, in which that difference is defined, but considering them when assessing inventive step of a claim dependent on it, might have lead to inconsistent findings.
29. Therefore, in its preliminary opinion, the Board addressed the obviousness of the relevant difference, and the parties' initial submissions on the issue, upfront, in the context of the inventive step of claim 1 of the patent.
30. The subsequent submissions of both parties are reactions to those statements of the Board and must also be considered (Article 13(3) RPBA).

Main request: inventive step in view of D6

31. The Board agrees with both parties, that D6 is an appropriate starting point for the assessment of inventive step of claim 1 of the main request. Indeed, it belongs to the same technical field as the patent and is also concerned with facilitating the interaction of a user with a hob (D6: [0004]).

32. As indicated above, the hob of claim 1 differs from that of D6 in that, *in one operating mode, the control unit is adapted to cause a selection of a certain cooking zone and provide a corresponding indication on the user interface that the certain cooking is from now on selected, if a corresponding signal from the pot detection unit was received by the control unit that a temporal interruption of a presence of a pot on a certain cooking zone was detected.*
33. Contrary to what the proprietor argues, this adaptation does not contribute to an improved human-machine interaction.
34. The hob of D6 already enabled the selection of a cooking zone on which a pot is located, without the need for interaction with the user interface of the hob, by the user touching or sliding the pot (D6: [0043]).
35. The technical problem is, instead, that of providing the hob of D6 with further gesture recognition capabilities.
36. The proprietor argues that the skilled person would have had no motivation to provide the hob of D6 with further gesture recognition capabilities, since it already allowed selection of the cooking zone without the need for interaction with its user interface.
37. However, the skilled person is normally motivated to seek further developments, and paragraph [0004] of D6 actually encourages this.
38. The skilled person would, then, have implemented the recognition of other gestures that are often made by

the users of a cooking hob, such as, in particular, the gesture of temporarily removing a pot from a cooking zone, perhaps for adding an ingredient.

39. The proprietor does not dispute that such a gesture was indeed often employed. Indeed, paragraph [0014] of the patent acknowledges gestures of shifting, sliding and lifting of pots as typical gestures a cook might use.
40. Instead, the proprietor argues that the skilled person would not have considered implementing the detection of a temporary interruption in the presence of a pot on a cooking zone, because D6 did not suggest any evaluation over time. D6 only disclosed the detection of individual transitions, such as those that occur when the user touches or displaces a pot.
41. However, D6 teaches the detection of a touch for at least a certain minimum period of time on the order of seconds, such as at least 1 second (D6: [0020]).
42. The skilled person would also implement the detection of interruptions of presence of the pot for a similar period of time, as these are simply the periods involved in the gestures a cook typically makes.
43. The proprietor also argues that the skilled person would have seen no need to implement the detection of a temporary interruption of the presence of a pot, since, according to paragraph [0042] of D6, an interruption of the presence of the pot from the cooking zone would already cause a renewed selection of the cooking zone.
44. However, the skilled person would realise that a renewed selection of the cooking zone in that way would involve the deactivation and reactivation of the

cooking zone (D6: [0031]), which would be seen as unnecessary and inconvenient, since the intention was to continue using the cooking zone.

45. The disclosure of paragraph [0042] would, then, not dissuade the skilled person from expanding on the teaching of paragraph [0043], by implementing the detection of an interruption of a few seconds in the presence of a pot on the cooking zone, as a gesture of renewed selection of the cooking zone, thereby arriving at a hob falling within the scope of claim 1 of the patent.
46. Consequently, the main request is not allowable.

Auxiliary request 1: request for remittal

47. The proprietor requests remittal to the Opposition Division, "should the Board of appeal come to the conclusion that the appeal as far as claim 1 as granted is concerned is founded." Such a conclusion would, according to the proprietor, imply an interpretation of the claim features completely different from the Opposition Division's, which would involve consideration of new aspects and a different interpretation of the prior art documents. Further, a remittal would be appropriate, in order to guarantee the right to be heard and the full scope of two instances, because the opponent had raised additional objections, not discussed during opposition proceedings so far.
48. The proprietor's arguments are, however, unfounded, because the Board, in essence, follows the Opposition Division's interpretation.

49. The fact that the Opposition Division did not take a decision on the auxiliary requests, because they decided to reject the opposition, is not, in itself, a reason for remittal. As will become apparent, discussion of the auxiliary requests does not require significant deviation from the discussion with regards the main request.

50. Therefore, there are no special reasons for a remittal (Article 11 RPBA).

Auxiliary requests 2, 3, 5, 7, 8, and 10: inventive step in view of D6

51. Claim 1 of the auxiliary request 10 is identical to claim 1 of the main request.

52. Claim 1 of auxiliary requests 2 and 5 further defines that the temporary interruption is *within a predetermined time frame*, whereas claim 1 of auxiliary request 8 further defines that *a predetermined timeframe is provided for the temporal interruption*.

53. Both further definitions make explicit a limitation that was already implicit in claim 1 of the main request (points 11. and 12., above) and was taken into account in the inventive step analysis provided above (items 40. to 44.).

54. The explicit definition, in claim 1 of auxiliary requests 3 and 7, of the adaption of the control unit to process a sequence of signals from the pot detection unit, also makes explicit a limitation that was

implicit in claim 1 of the main request (item 15., above).

55. Therefore, no limitation with regard to claim 1 of the main request results from any of these amendments.
56. Consequently, claim 1 of all of these auxiliary requests lacks an inventive step in view of D6, for the same reasons as indicated above for the subject-matter of claim 1 of the main request.
57. Auxiliary requests 2, 3, 5, 7, 8, and 10 are, hence, also not allowable.

Auxiliary requests 4 and 9: inventive step in view of D6

58. Claim 1 of auxiliary request 4 adds, to claim 1 of the patent, the limitations that were added to claim 1 of the auxiliary requests 2 and 3, and further defines that the operating element common to all cooking zones is *implemented as a +/- operating element*.
59. As indicated above (points 53. and 54., above), the limitations that were added to claim 1 of the auxiliary requests 2 and 3 merely make explicit that were already implicit in claim 1 of the patent.
60. Additionally, D6 discloses the common operating element of its hob as being a +/- operating element (D6: figure 1, [0015] and [0029]).
61. Hence, this further limitation does not define a further difference between claim 1 and the disclosure of D6 . Consequently, the inventive step analysis

presented above for the main request applies equally to this request.

62. Claim 1 of auxiliary request 9 adds to claim 1 of the patent, in addition to the definition of the common operating element as *being implemented as an +/- operating element*, the definition of the at least one operating parameter as *comprising the power settings and a switch off timer*.
63. The above-mentioned passages of D6 disclose the +/- operating element as allowing the user to adjust the power settings, but do not mention a switch-off timer.
64. However, such a further difference, which is not linked to the other difference (see item 32. above), is a trivial implementation detail, well known in the prior art. It is, hence, unable to contribute to an inventive step.
65. Therefore, also auxiliary requests 4 and 9 are not allowable.

Auxiliary request 6 - inventive step in view of D6

66. Claim 1 of auxiliary requests 6 adds, at the end of claim 1 of auxiliary request 2, the limitation that *the user interface comprises a number of confirmation elements corresponding to cooking zones through which a user can confirm the selection of a cooking zone and a number of visual indication elements to indicate at least the actually selected cooking zone, wherein the visual indication element and confirmation element are respectively formed by one single element*.

67. The hob of D6 comprises visual indicators, such as, in particular, the visual indicators 15a to 15d depicted in figure 1 (D6: [0017], [0042] and [0048]). Additionally, D6 discloses the possibility of carrying out a targeted selection of cooking zones using selection elements (D6: [0021]).
68. D6 does not disclose, however, how these selection elements are to be implemented, nor does it disclose their use as confirmation elements.
69. The inventive step of these further differences between claim 1 and the disclosure of D6 can be evaluated independently of the inventive step of the difference identified for claim 1 of the main request. Indeed, while the difference for claim 1 of the main request solves the technical problem of further developing the gesture recognition capabilities of the hob of D6 (item 35. above), the indicator-confirmation elements solve the technical problem of avoiding an unintended selection of a cooking zone (patent: [0019] and [0020]).
70. D6 is also concerned with avoiding unintended selections. In this context, its paragraph [0021] discloses that, when selection gestures are detected for two cooking zones, no zone might be selected, or one of the zones might be randomly selected. Additionally, the same paragraph discloses the possibility of a manual selection of a cooking zone, using the selection elements.
71. In view of this disclosure of D6, the skilled person seeking an alternative solution to the problem of unintended selections, would have considered simply indicating, to the user, the cooking zones for which

gestures have been detected and asking the user to indicate, using the selection elements, for which of the cooking zones a selection was, in fact, intended.

72. In doing so, the skilled person would likewise have immediately contemplated the advantages of an providing the the confirmation-selection elements on the visual indicator elements 15a to 15d, as was well know in the art, thereby further reducing the possibility of an unintended selection.
73. Thus, the skilled person would arrive at the subject-matter of claim 1 of auxiliary request 6.
74. Therefore, auxiliary request 6 is also not allowable.

Auxiliary request 11- inventive step in view of D6

75. Claim 1 of auxiliary request 11 adds to claim 1 of main request, the limitation that an operational parameter is adjusted with a single operating element implemented as a +/- operating element, and, furthermore, that the temporary interruption comprises a *duration of 1 to 10 seconds, preferable 2 seconds*.
76. However, as indicated above, with regard to auxiliary requests 4 and 9, a +/- operating element is also known from D6 (figure 1, [0015] and [0029]).
77. Additionally, as also indicated above, the gestures made by a user of the cooking hob are typically on the order of seconds, and D6 already suggests the detection of a gesture for a minimum period of one second (D6: [0020] and [0048]).

78. Hence, the skilled person, adapting the hob of D6 to select a cooking zone if a temporary interruption of the presence of a pot on that cooking zone is detected, would naturally implement the detection of interruptions of a duration of 1 to 10 seconds, as defined in claim 1 of this request.
79. Hence, also auxiliary request 11 cannot be allowed.

Order

For these reasons it is decided that:

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

The Registrar:

The Chair:



D. Meyfarth

P. Scriven

Decision electronically authenticated