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**Datasheet for the decision  
of 7 November 2023**

**Case Number:** T 0594/22 - 3.2.04

**Application Number:** 10155661.1

**Publication Number:** 2363048

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

**Language of the proceedings:** EN

**Title of invention:**

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

**Patent Proprietor:**

Whirlpool Corporation

**Opponent:**

Electrolux Rothenburg GmbH Factory and Development

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(a), 104(1)

RPBA 2020 Art. 12(5)

**Keyword:**

Grounds for opposition - lack of patentability (yes)  
Discretion not to admit submission - requirements of Art.  
12(3) RPBA 2020 met (no)  
Apportionment of costs - (no)

**Decisions cited:**

T 0839/15

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0594/22 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 7 November 2023**

**Appellant:** Electrolux Rothenburg GmbH Factory and  
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**Representative:** Schröer, Gernot H.  
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**Respondent:** Whirlpool Corporation  
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**Representative:** PGA S.p.A.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 21 December  
2021 rejecting the opposition filed against  
European patent No. 2363048 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** G. Martin Gonzalez  
C. Heath

## **Summary of Facts and Submissions**

I. This is the second appeal in the opposition proceedings against the patent. In a first appeal **T 0839/15** the Board (in a different composition) held that the invention as claimed in granted independent claims 1 and 8 was sufficiently disclosed and remitted the case for further prosecution.

II. In its subsequent decision the opposition division rejected the opposition.

The opposition division held amongst other things that granted claims 1 and 8 were new and involved an inventive step over the cited prior art, having regard inter alia to D6 and the common general knowledge of the skilled person.

In the present appeal the opponent appeals this decision to reject the opposition.

III. In preparation for oral proceedings originally scheduled for 17 November 2023 the Board issued a communication setting out its provisional opinion on the relevant issues.

Following a letter of 30 October 2023 from the respondent proprietor announcing that they would not attend the scheduled oral proceedings, the Board cancelled the oral proceedings.

IV. The appellant opponent requests that the decision under appeal be set aside and the patent revoked.

The respondent proprietor requests dismissal of the appeal or that the decision under appeal be set aside and the patent maintained according to one of auxiliary requests 1-9, all previously filed before the opposition division and re-filed with the reply of 12 September 2022. They also request apportionment of costs in their favour.

V. The independent claims of the main request (as granted) reads as follows:

"1. Steam oven for cooking food placed in a vacuumized and sealed pouch and comprising a user interface and an electronic control unit, characterized in that said electronic control unit is adapted to select a predetermined heating temperature on the basis of a food category chosen by the user through the user interface and of a maximum predetermined load of food, and to select a heating time according to a predetermined reduction of food pathogens."

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

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

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

(D6) US 2010/0034935 A1

VII. The appellant's relevant arguments can be summarised as follows:

The subject-matter of granted claims 1 and 8 lacks an inventive step over the combination of D6 with common general knowledge. The respondent's request for apportionment of costs must be rejected as inadmissible.

VIII. The respondent's relevant arguments can be summarised as follows:

Granted claims 1 and 8 are new and involve an inventive step over the cited prior art. The request for a different apportionment of costs is justified and therefore allowable.

### **Reasons for the Decision**

1. The appeal is admissible.

2. Background

The invention relates to cooking food placed in a vacuumized and sealed pouch in a steam oven. This technology involves thermally processing raw or partially prepared food in vacuumized and sealed pouches at a heating temperature, normally under 100 °C, and optionally chilling and storage at 0-3 °C before reconstitution and consumption, see

specification paragraph [0002]. Some of the major microbiological hazards associated with sous-vide processing are linked to food pathogens that may survive the cooking temperature below 100 °C (e.g. 70 °C), see specification paragraphs [0004]-[0005]. The claimed invention aims at providing a steam oven and a corresponding method for performing sous-vide cooking without the above risk of pathogens, especially for domestic use, see paragraph [0013]. To this end the claimed steam oven and method call for "a well-defined combination of cooking time and temperature and ... a maximum quantity of food loaded in the steam cavity" to guarantee safety and performance of the food cooked accordingly, see paragraph [0015].

3. Main request - Inventive step

3.1 With their grounds, the appellant inter alia contested the finding of novelty of granted claims claims 1 and 8 over D6 and of inventive step starting from D6 in combination with common general knowledge.

3.2 The Board noted in its written communication that it considered the subject-matter of claims 1 and 8 to be new over D6 but to lack an inventive step in the light of D6 in combination with common general knowledge, as follows:

*"7. Main request - novelty*

*7.1 .../...*

*7.4 As regards D6, as held by the opposition division, cf. section 5.1.1, D6 does not disclose an oven control unit that selects a predetermined heating temperature and time. The disclosure in para 0053 of D6*

*is ambiguous. It may be the human operator who selects these data, available from a database, and introduces them into the oven control. Nothing else can be derived from para. 0043. This paragraph only states that the cooking components are arranged efficiently in a manner intended to centralize control activities in one station. There is no specific disclosure of how heating temperature and time of the oven is set. Claims 1 and 8 are therefore new.*

*Otherwise, D6 discloses predetermined time and temperature data in the sense of the contested claims. These data stored in the database achieve a target pathogen reduction, since they ensure pasteurization, cf. para 0053, lines 5-9. Also, the cooking temperatures and times are selected by food product type cf. para 0056, last sentence, that is according to a food category as claimed. These values of the database of D6 are also implicitly limited to a maximum predetermined load of food, namely the maximum oven capacity in D6 or the maximum pouch load of the trial stage of para 0053 and step 410, as held by the opposition division, section 5.1.1 of the decision.*

*8. Main request - Inventive step*

*8.1 D6 is considered by the parties as a suitable starting point.*

*As discussed above for novelty, it is unclear in D6 whether the control unit 250 selects a predetermined heating temperature and time for the oven or whether it is the human operator who selects these data from the database and introduces them into the oven control.*



8.2 *Claims 1 and 8 thus differ from the known oven and method in that it specifically requires that the control unit selects the predetermined heating temperature and time. The effect achieved by these features is the automation of the operation. This avoids human errors. On the basis of this effect, both parties formulate similar technical problems of how to guarantee quality and pathogens-safety or how to improve food safety.*

8.3 *In the Board's understanding, the differentiating features and effect represent the straightforward automation of the known operation otherwise carried out by the human operator. Such automation has the obvious benefit of eliminating human error, with the concomitant advantage in this context of improving food safety.*

*According to established case law of the Boards, mere automation of functions previously performed by human operators is in line with the general trend in technology and thus cannot be considered inventive, cf. Case Law of the Boards of Appeal, 10th edition 2022 (CLBA), I.D.9.21.6.*

8.4 *The Board is at present not convinced by the argument that the skilled person would not carry out such automation as a matter of obviousness because it is not motivated by any teaching in D6 itself, which according to the respondent is addressed to a manual programming of the appliances. As explained above, automation is a general trend in technology and the skilled person is thus generally intent, also without explicit suggestion in the specific prior art, on automating manual tasks in order to e.g. reduce human errors or increase productivity. Nor would the skilled*

*person be prevented from automating the known process because the control unit 250 of D6 is not arranged to control the cooking components of the suite. The Board is at present rather persuaded that the skilled person, a production engineer involved in designing cooking devices and facilities, possesses the relevant common general knowledge in electronics and automation technology for such a routine adaptation of the known control unit 250 and steam oven. Otherwise there appears to be nothing special in the way the automation is realized, namely by corresponding adaption of the control unit.*

*8.5 It thus appears that claims 1 and 8 lack an inventive step in the light of D6 in combination with common general knowledge."*

- 3.3 The respondent proprietor has not commented on the above preliminary opinion of the Board. Absent further submissions the Board sees no reasons to change its provisional point of view. It thus holds that, contrary to the conclusions of the opposition division in section 6.2 of the impugned decision, granted claims 1 and 8 lack an inventive, Art. 100(a) EPC in combination with Art 56 EPC.

The impugned decision must therefore be set aside.

4. Auxiliary requests - Admission

- 4.1 As noted by the Board in its written communication:

*"9. Auxiliary requests 1-9*

*9.1 With the reply to the appeal, the respondent re-files auxiliary requests 1-9 pursued in opposition*

*(after remittal). These requests introduce further limitations to the independent claims that appear intended to address novelty and inventive step. However no argument is given how they might address these issues or any other issue on file. The respondent has thus failed, for these requests, to state their complete case in the sense of Art 12(3) RPBA, to "set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld". They therefore do not appear to be admissible, Art 12(5) with Art 12(3) RPBA."*

4.2 The respondent proprietor refrained from further comment. Absent any further comment, the Board sees no reasons to change its preliminary opinion on this issue. It thus decides not to admit auxiliary requests 1-9 for lack of substantiation, Art 12(5) with Art 12(3) RPBA.

5. Apportionment of costs

5.1 The Board, in its written communication, already noted that the request for apportionment of costs does not appear to be equitable:

*"12. Apportionment of costs*

*A different apportionment of costs for the filing of new evidence D18-D26 with the grounds of appeal does not appear to be equitable. Under Art 104(1) EPC, each party must, as a rule, meet the costs it has incurred. The opposition division or board of appeal may, for reasons of equity, order a different apportionment of costs.*

*In the present case, the new evidence has been filed with the statement of grounds. While it may well be that new evidence is held inadmissible by the Board, it is nonetheless not unusual that a losing opponent attempts to file new evidence or objections to further its case in appeal. Admission and/or relevance of late-filed evidence is in the Board's view part of the normal work that can be expected of a respondent proprietor, much as also an opposing party may as part of their usual professional activity need to consider auxiliary requests filed by the proprietor regardless of whether they are ultimately admitted or not."*

5.2 In the absence of further submissions, the Board sees no reason to change its preliminary point of view. It thus refuses the respondent's request for a different apportionment of costs, Art 104(1) EPC.

## 6. Conclusion

The Board is unable to confirm the conclusion of the decision under appeal that none of the opposition grounds raised against granted claims 1 and 8 prejudices the maintenance of the European patent. It must therefore set aside the impugned decision. As the Board also does not admit any of the respondent proprietor's auxiliary requests, it must revoke the patent pursuant to Article 101(2) 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:



G. Magouliotis

A. de Vries

Decision electronically authenticated