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**Datasheet for the decision
of 12 June 2008**

Case Number: T 1880/07 - 3.2.04

Application Number: 05404002.7

Publication Number: 1621117

IPC: A47J 43/08

Language of the proceedings: EN

Title of invention:

Kitchen robot

Applicant:

Erna-Mas Makina Ticaret Ve Sanayi A.S.

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter (yes)"

"Request of postponement of filing date due to added subject-matter (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 1880/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 12 June 2008

Appellant:
(Applicant)

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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 24 August 2007
refusing European application No. 05404002.7
pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: C. Scheibling
Members: C. Heath
A. de Vries

Summary of Facts and Submissions

- I. Subject of these proceedings is the appeal against the examining division's decision of 24 August 2007 to refuse patent application No. 05404002.7.
- II. Patent application No. 05404002.7 was filed on 30 June 2005 in the English language in the name of Erna-Mas Makina Ticaret Ve Sanayi A.S. by the representative Mr Ahmet Basalan who is entitled to act before the EPO. The title of the invention was "kitchen robot".

In a communication of 11 July 2006, the primary examiner notified the representative that the application did not fulfil the requirements of Article 83 EPC, as it did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. In particular important information relating to the coupling of the drive unit to the motor and to the tool in the container was missing.

In a subsequent letter of 4 September 2006, the representative submitted an amended description that added considerably more detail of the precise workings of the kitchen robot at issue.

In reply thereto, the examiner dispatched a second communication on 21 November 2006, indicating that the amended description introduced subject-matter extending beyond the content of the application as filed, thus contravening Article 123(2) EPC.

In response, the applicant's representative sent a letter on 16 March 2007 that did not directly deal with the objections raised under Articles 83 or 123(2) EPC, but rather stated that "all amendments have been issued like you have requested in the first examination report." Furthermore, an instruction manual of the household appliance was attached. The letter further requested a re-examination "in the light of the amended set of description, explanations and product usage guide", noting that "this application is very important and urgent for our client." In addition, four further drawings and an amended description were filed.

In response thereto, the examiner on 25 April 2007 issued a further communication according to which the newly filed amendments were contrary to Article 123(2) EPC, referring to both the amended description and the four additional drawings. The applicant was given a further four months for reply.

III. By way of reply, the applicant's representative on 6 July 2007 submitted a letter which was "to the attention of the Boards of Appeal" and the subject of which read "filing an appeal against the decision of the European Patent Office 05404002.7 numbered European patent application." In the reasons of this purported appeal, the letter quoted verbatim from the three communications issued by the examiner. With respect to the objection under Article 123(2) EPC it further stated the following: "we would like to let you know that in our amendments the original content is not extended. The original content does not change. Only the explanation type has been changed. The explanations have been filed more clearly, larger and understandable."

No more content has been added to our application. For this reason, we are in the opinion that the amendments in our patent application should not be evaluated as extending the subject-matter of the content of the patent as filed in the application step." In addition to this letter, the appropriate appeal fee was paid.

The examiner took this purported appeal as a reply to his last communication, and ordered the appeal fee to be refunded. On 24 August 2007, he issued a decision refusing the application containing the description and drawings as amended, taking into account the representative's various statements. The refusal was based on the following grounds: "the examining division finds that, although the amendments might provide clarifications on the operation and arrangement of the embodiment disclosed in the application, they nevertheless disclose features which are not directly and unambiguously derivable from the original application as filed, thus infringing the requirements of the Article 123(2) EPC. If a disclosure is insufficient according to Article 83 EPC, such a deficiency cannot be cured by adding further subject-matter which was not originally disclosed in the application as filed, as the inclusion of such subject-matter offends against Article 123(2) EPC. With regard to the applicant's allegation that the amendments filed have been requested by the examining division in its first communication dated 11 July 2006, such communication, like all other communications issued by the examining division, only points out a number of deficiencies in the application and does not formulate any specific request concerning amendments to the application."

- IV. Against this decision, the applicant's representative on 15 October 2007 filed an appeal and paid the appeal fee. The reasons for the appeal, also filed with letter of 15 October 2007, were essentially the same as those stated in the letter of 6 July 2007. Only two sentences were added, one being that "our patent application is novel and the amendments on the application filed do not contain any explanation which beyond the original content."
- V. The Board on 1 February 2008 sent out a communication indicating that in its preliminary view, the subsequent additions made to the original application did contain subject-matter going beyond the original contents of the application and that it therefore saw no reason why the appeal should be allowed. The Board also noticed that while the applicant's representative had consistently maintained the view that no information had been added, no detailed technical explanation in this respect had been provided. The Board finally noted an apparent lack of familiarity with the European patent system and gave the applicant an opportunity to further substantiate its arguments. It finally indicated that unless oral proceedings were requested, the Board intended to issue a final decision.
- VI. In a letter of 10 April 2008 the applicant reiterated that the subsequent addition of two paragraphs in the description, plus the two drawings, did not amount to an impermissible broadening of the application. However, in case the Board was not minded to accept this position, the applicant suggested that "the application date can be accepted as the date of the explanations

and amendments have been filed instead of rejecting the patent application", thereby seeming to suggest that the application be re-dated to the date of filing of the amended description and drawings.

- VII. The applicant requests the decision under appeal to be set aside and a patent to be granted for the above-mentioned application.

Reasons for the Decision

1. The appeal is admissible but not well-founded.
2. The application was refused based on the examiner's view that new subject-matter had been added during the examination process contrary to Article 123(2) EPC. The amended patent application containing the additional two paragraphs of explanations and four further drawings is still the one before the Board and the object of the applicant's request for grant of a patent.
3. In the absence of any technically related arguments why the additional four drawings and the enlarged description should not amount to a broadening of the original application, the Board sees no reason to deviate from the findings of the decision under appeal. The four drawings subsequently filed disclose features that were not disclosed in the original application as filed (showing how the motor, the transmission and the accessory are arranged in the kitchen robot), and the amended parts of the description contain new details of features that were not directly and unambiguously derivable from the original application, such as for

example the passage, page 1, line 26 to page 2, line 17 of the amended description, which describes the position of the upper handle and how the drive unit can be rotated, coupled to the accessory and locked.

4. In such case, and contrary to the applicant's suggestion, the EPC does not foresee the possibility of allocating a later filing date to an application with added subject-matter, namely the date when the subject-matter was added. Should subject-matter have been added contrary to Article 123(2) EPC, the applicant prior to grant for that application can only revert to the original description and drawings. This course of action has not been taken here, and would most likely have been unsuccessful in view of the objection under Article 83 EPC.

He might also consider filing a new application with the added subject-matter. However, this course of action would most likely also have been unsuccessful, as the original application as well as the subsequent additions have all been made public prior to the filing date of such a new application and would thus be prejudicial to the novelty of the newly filed subject-matter.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Scheibling