

Internal distribution code:

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

**Datasheet for the decision
of 12 December 2014**

Case Number: T 1363/12 - 3.2.06

Application Number: 04254686.1

Publication Number: 1529873

IPC: D06F39/12, D06F39/14

Language of the proceedings: EN

Title of invention:

Reinforcement for the top plate of a drum washing machine

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Relevant legal provisions:

EPC Art. 123(2)
RPBA Art. 13(1)
Guidelines for examination H-IV, 2.3

Keyword:

Amendments of application - allowable (no)
Late-filed auxiliary requests - request clearly allowable (no)

Decisions cited:

G 0002/10, G 0001/93, T 2619/11

Catchword:

The fundamental test under Article 123(2) EPC remains the "gold" standard referred to in G 2/10, namely, what would a skilled person directly and unambiguously derive, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the original disclosure.

The decision in T 2619/11 did not lay down a different test, namely, of what was "really disclosed" to the skilled person.

Decisions on Article 123(2) EPC are very case-specific and care should be taken in applying statements of Boards of Appeal made in the context of particular factual situations to other factual situations.

See point 1.2 of the Reasons.



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent
Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89
2399-4465

Case Number: T 1363/12 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 12 December 2014

Appellant: Samsung Electronics Co., Ltd.
(Applicant) 129, Samsung-ro
Yeongtong-gu
Suwon-si, Gyeonggi-do, 443-742 (KR)

Representative: Waddington, Richard
Appleyard Lees
15 Clare Road
Halifax HX1 2HY (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 26 January 2012
refusing European patent application No.
04254686.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
K. Garnett

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the decision of the examining division to refuse European patent application No. 04 254 686.1.

- II. Prior to the refusal of the application a communication under Rule 71(3) EPC was issued by the examining division stating its intention to grant a patent based on the claims of the auxiliary request submitted during oral proceedings before it on 27 May 2011. In an annex to this communication the division stated that the claims according to the main request, filed with a letter dated 15 April 2011, did not comply with the requirement of Article 123(2) EPC. The appellant however did not agree with the version intended for grant and maintained its main request. Thereupon the examining division refused the application. The reasons of the impugned decision only address the claims of the main request.

- III. With the notice of appeal and the appeal grounds, the appellant made a single request for the grant of a patent according to the claims of the main request underlying the impugned decision. No mention was made of the claims constituting the auxiliary request previously considered allowable by the examining division.

- IV. In the communication annexed to a summons to oral proceedings, the Board informed the appellant of its preliminary opinion, according to which the sole request did not appear to meet the requirement of Article 123(2) EPC.

- V. In a letter dated 7 November 2014 the appellant replied to the Board's communication, maintained its previous

main request and submitted a first auxiliary request. The appellant also requested, in the event that the Board would not find the first auxiliary request acceptable, grant of a patent based on the claims for which the examining division had issued the communication under Rule 71(3), dated 11 July 2011.

VI. At the oral proceedings before the Board, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request filed with its letter dated 15 April 2011 in the examination proceedings, alternatively the first auxiliary request filed with its letter dated 7 November 2014, alternatively, as its second auxiliary request, on the basis of the first auxiliary request filed during the oral proceedings before the Examining Division on 27 May 2011 (as attached to the minutes of those proceedings).

VII. Claim 1 of the **main request** reads:

"A drum washing machine, comprising:
a cabinet (10) which defines an external appearance of the drum washing machine, wherein the cabinet (10) has a front wall at a front of the cabinet (10) and a rear wall at a rear of the cabinet (10), and an opening (11) is formed at an upper portion of the cabinet (10);
a top plate (20) mounted to the upper portion of the cabinet (10) to cover the opening (11);
a water tub (12) set in the cabinet (10) to contain wash water therein;
a rotary tub which is rotatably set in the water tub (12), wherein the rotary tub is perforated on a sidewall thereof so that the wash water flows from the water tub (12) into the rotary tub;
a front opening in the front wall of the cabinet (10)

through which a user may put laundry into the rotary tub;

a door (30) which is rotatably mounted to the front wall of the cabinet (10) to open and close the front opening;

a control panel (13), having a plurality of buttons (13a) to control an operation of the drum washing machine, wherein the control panel (13) is mounted on the front wall of the cabinet (10) above the front opening;

an electric wire (60) arranged in the cabinet (10) extending from the control panel (13);

characterised in that:

a reinforcement (70) is mounted to extend across the opening (11) in a position to reinforce the strength of the cabinet (10) and to couple the front wall of the cabinet (10) to the rear wall of the cabinet (10); and

the electric wire (60) is supported by the reinforcement (70) extending from the front wall of the cabinet (10) to the rear wall of the cabinet (10) and is spaced from the water tub (12)."

Claim 1 of the **first auxiliary request** reads:

"A drum washing machine, comprising:

a cabinet (10) which defines an external appearance of the drum washing machine, wherein the cabinet (10) has a front wall at a front of the cabinet (10) and a rear wall at a rear of the cabinet (10), and an opening (11) is formed at an upper portion of the cabinet (10);

a top plate (20) mounted to the upper portion of the cabinet (10) to cover the opening (11);

a water tub (12) set in the cabinet (10) to contain wash water therein;

a rotary tub which is rotatably set in the water tub (12), wherein the rotary tub is perforated on a sidewall thereof so that the wash water flows from the water tub

(12) into the rotary tub;
a front opening in the front wall of the cabinet (10) through which a user may put laundry into the rotary tub;
a door (30) which is rotatably mounted to the front wall of the cabinet (10) to open and close the front opening;
a control panel (13), having a plurality of buttons (13a) to control an operation of the drum washing machine, wherein the control panel (13) is mounted on the front wall of the cabinet (10) above the front opening;
an electric wire (60) arranged in the cabinet (10) extending from the control panel (13);
characterised in that:
a reinforcement (70) is mounted to extend across the opening (11) in a position to reinforce the strength of the cabinet (10) and to couple the front wall of the cabinet (10) to the rear wall of the cabinet (10);
wherein the reinforcement (70) comprises:
a support plate (80) mounted to a predetermined portion of the cabinet (10) while extending across the opening (11); and
a wire holder (91) provided at a predetermined portion of the reinforcement (70) to hold the electric wire (60),
wherein the electric wire (60) is supported by the reinforcement (70) extending from the front wall of the cabinet (10) to the rear wall of the cabinet (10) and is spaced from the water tub (12)."

Claim 1 of the **second auxiliary request** reads:

"A drum washing machine, comprising:
a cabinet (10) which defines an external appearance of the drum washing machine, wherein the cabinet (10) has a front wall at a front of the cabinet (10) and a rear

wall at a rear of the cabinet (10), and an opening (11) is formed at an upper portion of the cabinet (10);

a top plate (20) mounted to the upper portion of the cabinet (10) to cover the opening (11);

a water tub (12) set in the cabinet (10) to contain wash water therein;

a rotary tub which is rotatably set in the water tub (12), wherein the rotary tub is perforated on a sidewall thereof so that the wash water flows from the water tub (12) into the rotary tub;

a front opening in the front wall of the cabinet (10) through which a user may put laundry into the rotary tub;

a door (30) which is rotatably mounted to the front wall of the cabinet (10) to open and close the front opening;

a control panel (13), having a plurality of buttons (13a) to control an operation of the drum washing machine, wherein the control panel (13) is mounted on the front wall of the cabinet (10) above the front opening;

a plurality of electric wires (60) arranged in the cabinet (10) extending from the control panel (13);

characterised in that:

a reinforcement (70) is mounted to extend across the opening (11) in a position to reinforce the strength of the cabinet (10) and to couple the front wall of the cabinet (10) to the rear wall of the cabinet (10);

wherein the reinforcement (70) comprises:

a support plate (80) mounted to a predetermined portion of the cabinet (10) while extending across the opening (11);

side plates (90) extending upwardly from each of both side edges of the support plate (80), respectively, to support the top plate (20); and

a wire holder (91) provided at a predetermined portion of the reinforcement (70) to hold the electric wires

(60), wherein
the electric wires (60) are supported by the
reinforcement (70) extending from the front wall of the
cabinet (10) to the rear wall of the cabinet (10) and
are spaced from the water tub (12)."

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

Main request & first auxiliary request

The added paragraph in section H-IV, 2.3 of the revised
Guidelines for Examination applicable as from
1 November 2014, i.e. at the time of the oral
proceedings before the Board, constituted an
interpretation of how to apply the decision G 2/10 of
the Enlarged Board of Appeal. Although these Guidelines
were primarily directed to the examining divisions, this
interpretation should be applied for the sake of
harmonisation and to the benefit of applicants to all
decisions of the examining divisions, the Boards of
Appeal and the Enlarged Board of Appeal.

Moreover, other recent case law of the Boards of Appeal
have held that in deciding whether an amendment was
allowable under Article 123(2) EPC it had to be
considered whether there was new technical information
added by the amendment.

In regard to the feature objected to by the Board, i.e.
"a reinforcement (70) is mounted to extend across the
opening (11) in a position to reinforce the strength of
the cabinet (10) to the rear wall of the cabinet (10)",
it was clearly and unambiguously derivable by the
skilled person from page 4, lines 12-16 and page 9,
lines 28 to 32 and page 13, lines 28 to 30 of the
description as filed, along with Figures 1 and 2. In

particular from the term "may include" in the passage on page 4 it was clear that the features "support plate" and "side plates" were optional features. The feature "reinforcement" was basically the same as a "support plate"; the skilled person would have recognised that the "reinforcement" could be provided by any means, for example a bar, the wires being attached to it. Consequently the statement in the claim did not introduce any new technical information.

Second auxiliary request

The subject-matter of claim 1 was based on inter alia original claims 1 and 2 and on the description as filed on pages 1, 2, 4, 7 and 8. In particular the feature "a control panel..." and the feature "a plurality of electrical wires... extending from the control panel" were disclosed on page 2, lines 6 to 8, 11, page 4, line 8, page 8, lines 4 to 7, 26 and in original claim 2.

Reasons for the Decision

Main request

1. The issue to be decided in this appeal is whether amended claim 1 contains subject-matter extending beyond the content of the application as filed (Article 123(2) EPC).
- 1.1 The basic principle when applying Article 123(2) EPC is to be found in the jurisprudence of the Enlarged Board of Appeal and was summarised and confirmed in its decision G 2/10 (OJ EPO 2012, 376, point 4.3). While referring to opinion G 3/89 and decision G 11/91 (OJ EPO

1993, 117 and 125), the Enlarged Board of Appeal considered the following definition given therein to have become the "gold" standard for assessing any amendment for its compliance with Article 123(2) EPC:

"From these rulings it follows that any amendment to the parts of a European patent application or of a European patent relating to the disclosure (the description, claims and drawings) is subject to the mandatory prohibition on extension laid down in Article 123(2) EPC and can therefore, irrespective of the context of the amendment made, only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of these documents as filed, points 1., 1.3 and 3. of the Reasons."

- 1.2 The appellant has relied on the revised Guidelines for Examination of the European Patent Office, in the version valid as of 1 November 2014, in support of a general submission that a more lenient standard than the "gold" standard should be applied. In particular, the appellant referred to the following paragraph which has been added in section H-IV, 2.3:

"When assessing the conformity of the amended claims to the requirements of Art. 123(2) EPC, the focus should be placed on what is really disclosed to the skilled person by the documents as filed as directed to a technical audience. In particular, the examiner should avoid disproportionately focusing on the structure of the claims as filed to the detriment of the subject-matter that the skilled person would directly and unambiguously derive from the application as a whole."

Quite apart from the fact that the Boards of Appeal are not bound by the Guidelines for Examination, as was acknowledged by the appellant, it is to be noted that the principles established by the Enlarged Board of Appeal (see above) for the assessment of the requirement of Article 123(2) EPC cannot be changed by issuing amended Guidelines. Consequently, the appellant's suggestion that the above statement was somehow applicable in this appeal at the time of the oral proceedings before the Board is wrong: there has been no change in the standard to be applied under Article 123(2) EPC. Thus, in the present case, the assessment to be made is still whether the subject-matter of amended claim 1 is directly and unambiguously derivable from the application as filed.

The Board further notes that neither the above cited statement in the Guidelines nor the entire section H-IV, 2 thereof contains any reference to the decision G 2/10 or the earlier decisions of the Enlarged Board on this issue. The added wording is also not derivable from G 2/10 and appears instead to have been taken from T 2619/11. Although the latter decision was taken after G 2/10, the relevant passages therein (see the Catchword and Reasons, point 2.1) are not expressed to be a development of the Enlarged Board's decision in G 2/10 or the earlier jurisprudence of the Enlarged Board of Appeal. Rather, they were made in the specific factual context of that case, in the light of which the Board came to the conclusion that the Examining Division had made a mistake by focusing disproportionately on the claim structure of the original application and not on what the skilled person would clearly and unambiguously derive from the application as whole. The present Board observes that whether subject-matter has been added in the sense of Article 123(2) EPC can only be decided on

the basis of the facts of each individual case (see G 1/93, OJ 1994, 541, Reasons, point 17), i.e. the issue is very case-specific. While the above passage from the Guidelines may well be correct when applied to particular factual situations similar to that which arose in T 2619/11, the present Board does not consider that any more general principle can be derived from this decision. Indeed, the Board can find no suggestion that the relevant statements in T 2619/11 were in any way intended to override or provide a new assessment of the "gold" standard referred to above, nor can they be construed as introducing a more lenient criterion for the assessment of amended subject-matter. In particular, the present Board does not consider the Board's statement in T 2619/11 (point 2 of the Reasons) that such disproportionate focusing had been to the detriment of what was "really disclosed" to the skilled person was intended to add a gloss to the "gold" standard. This can be seen from a consideration of the structure of the reasoning in that case. Thus, first, the Board identified what it considered to have been the mistake made by the Examining Division, namely, that the focus of the decision was "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." The Board then went on to consider the application as filed in detail, after which it came to a conclusion about what was "directly and unambiguously disclosed to the skilled person ..." (see point 2.8 of the Reasons). The Board at this stage did not ask itself what was "really disclosed" to such person.

Finally, the appellant's argument that a more lenient criterion applied throughout the EPO might be to the

benefit of applicants, while no doubt true, is not in itself relevant.

1.3 Therefore the issue to be decided remains the same, i.e. whether the amended subject-matter of claim 1 is directly and unambiguously derivable from the application as filed, taking into account the skilled person's common general knowledge. The facts in T 2619/11 do not correspond to the facts underlying the present case, such that the statement there about not focusing "disproportionally" on the claim structure of the original application has no relevance to the facts of the present case.

1.4 The feature in the characterising portion of amended claim 1, "a reinforcement (70) is mounted to extend across the opening (11) in a position to reinforce the strength of the cabinet (10) and to couple the front wall of the cabinet (10) to the rear wall of the cabinet (10)", is not directly and unambiguously derivable from the application as filed.

Original claim 1 defines "a reinforcement placed at a predetermined portion of the opening to support and reinforce the top plate". Similar definitions are also made in the other independent claims originally filed in regard to the reinforcement and its purpose, i.e. "to support and reinforce the top plate". The purpose of the reinforcement according to amended claim 1 of the main request is however defined differently, namely, that besides coupling its front and rear walls, it shall reinforce the strength of the cabinet. This does not mean to specifically reinforce and support the top plate, because according to the claim's preamble the cabinet comprises the front and rear walls but not the top plate. The remaining features of amended claim 1

also do not define any structural or functional feature relating to the originally defined purpose, such purpose implying certain limitations with respect to the structural features required for achieving it, such as the structure embodying the "reinforcement" being installed so that it can take up forces acting on the top plate. The amended claim covers arrangements in which the reinforcement extends across the opening somewhat below an upper edge of the cabinet on which the top plate could be located without coming into contact with or necessarily supporting the top plate. Such arrangements, which were not covered by the original claims, are neither disclosed in the originally filed claims nor in the description or figures of the application.

The passages in the originally filed description indicated by the appellant as a basis for the amended feature, in particular page 13, lines 28 to 30, indeed disclose the wording "to reinforce the strength of the cabinet" within the description of the preferred embodiment. It is however clear from the context in which this wording is found, i.e. from the immediately following sentence as well as from the final sentence of the complete paragraph, that the function of the reinforcement resides in reinforcing the strength of the top plate. To this purpose the reinforcement is constituted by a support plate and two upwardly extending side plates. The general purpose of strengthening the top plate is for example also confirmed by the initial paragraph of the description or the last three lines of the first paragraph on page 4, line 12-16. The appellant did not indicate any other passages from which the objected feature was directly and unambiguously derivable, nor could the Board

identify a basis for it.

- 1.5 At least for the above reason the requirement of Article 123(2) EPC is not met, such that the appellant's main request is not allowable.

Auxiliary request 1

2. Auxiliary request 1 was filed in reply to the preliminary opinion issued by the Board. Having been filed after the grounds of appeal, which according to Article 12(2) of the Rules of Procedure of the Boards of Appeal (RPBA) should contain the appellant's complete case, the request constitutes an amendment to its case. 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. In order to be in line with the requirement of procedural economy, amendments should be *prima facie* or clearly allowable in the sense that they at least overcome the objections raised against previous requests.

In the present case, the deficiency under Article 123(2) EPC is not overcome by the amendments to claim 1. Although the reinforcement has been further specified as comprising *inter alia* a support plate, the previous objection still applies. A link between the added support plate and the omitted function of supporting and strengthening the top plate is not introduced by the amendment.

Since the objection raised against the main request is not overcome by the amendment according to auxiliary

request 1, this request is not *prima facie* allowable and the Board consequently exercised its discretion not to admit this request into the proceedings (Article 13(1) RPBA).

Auxiliary request 2

3. Although amended claim 1 comprises substantial amendments which overcome the above objection concerning the omission of the function of strengthening the top plate, and although for most features defined in claim 1 the appellant was able to indicate a basis in the application as filed, the claimed combination of features is nevertheless not directly and unambiguously derivable from the application as filed.

Compared to original claim 1, which according to the appellant constitutes the basis for the amended claim, features of a conventional drum type washing machine described in the introductory portion of the application as filed on pages 1 and 2, together with features described in relation to the drum washing machine according to the present invention, taken for example from pages 4 and 8, have been added to the claim. Amongst the added features are the "control panel" and "the plurality of wires ... extending from the control panel". Additional features concerning the reinforcement and the plurality of wires are defined in the characterising portion of the claim. In the relevant passages indicated by the appellant as a basis for these amendments, in particular on page 2, lines 6 and 11, and page 8, lines 4 to 7 and 26, the feature "a plurality of electric wires" is disclosed *inter alia* as being connected to water supply valves and to a water level sensor. Moreover, the description and Figure 1 disclose that the valves and the sensor are mounted at a rear

portion of the upper portion the cabinet (see also page 8, line 9-11 and 21/22).

The cited passages however contain no indication that the plurality of electric wires to be held by the reinforcement could connect to something other than these components at their respective specific positions. The appellant argued that a skilled person would have recognised that the nature and the position of the components to which the wires connect was irrelevant in regard to the second purpose the invention intended to achieve, i.e. guiding and supporting the wires from the front panel by the reinforcement over the drum. However, the features "a plurality of electric wires" and "reinforcement" are functionally and structurally inextricably linked to the above-mentioned further components and their specific position in the cabinet. It is precisely because the valves and sensor are mounted at the specific position at the upper portion on the cabinet's rear wall that the plurality of electric wires connecting them to the control panel, which is also mounted at an upper portion of the cabinet at its front wall, have to cross the cabinet and be supported by the reinforcement in order to avoid the contact with, and damage induced by, the vibrating water tub (cf. page 3, lines 14-20).

Since the amended claim does not include (at least) the further features which are disclosed in combination with the plurality of wires, the requirement of Article 123(2) EPC is not met. The second auxiliary request is therefore not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



N. Schneider

M. Harrison

Decision electronically authenticated