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**Datasheet for the decision
of 20 June 2017**

Case Number: T 2061/13 - 3.2.06

Application Number: 06008898.6

Publication Number: 1707662

IPC: D06F37/30

Language of the proceedings: EN

Title of invention:
Drum type washing machine

Patent Proprietor:
LG Electronics Inc.

Opponent:
Daewoo Electronics Corporation

Headword:

Relevant legal provisions:

EPC 1973 Art. 87(1)
EPC Art. 54(1), 123(2)
RPBA Art. 13(1)

Keyword:

Priority - same invention (no) - publication during the
priority interval - main request (no)
Novelty - public prior use (no)
Late-filed auxiliary requests - request clearly allowable (no)
Remittal to the department of first instance - (no)

Decisions cited:

G 0002/98

Catchword:



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Case Number: T 2061/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 20 June 2017

Appellant: LG Electronics Inc.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 4 April 2013
revoking European patent No. 1707662 pursuant to
Article 101(3) (b) EPC.

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
J. Hoppe

Summary of Facts and Submissions

I. European patent No. 1 707 662 was revoked by the opposition division by way of its decision posted on 4 April 2013. The opposition division found that the subject-matter of claim 1 of the main request and of the auxiliary request lacked a right to priority from

P1 KR 10-2002-0078337 (filed on 10 December 2002)

and therefore lacked novelty over the public prior use of a washing machine WD-R100C occurring between the priority date and the filing date of the patent, evidence of which was given in:

Appendix A: print outs of web pages A-1 to A-8

A1: printout of LG web page concerning advertising of washing machine model WD-R100C in Korean newspapers

A2: printout from Internet shopping platform Naver

A3: printout from Internet site "Wedding 119"

A4 and A5: newspaper advertisements dated 4 October 2003 in two Korean newspapers

A6: a report on a price survey conducted from 6 to 10 October 2003, for certain consumer products, among them washing machines with the product code WD-R100C, published on the Internet site of the "Korea National Council of Consumer Organizations"

A7: printout from LG Customer Service web page

A8: printout from Internet shopping platform "My Magin MM.co.kr",

Appendix B: a set of photographs documenting the dismantling of one such washing machine bearing a label with a manufacturing month of October 2003

Appendix C: a statutory declaration by Su-Hiang Kang concerning the disassembly of the washing machine of appendix B.

- II. The opponent withdrew its opposition with letter of 1 March 2013.
- III. The appellant (proprietor) filed an appeal against this decision and in its grounds of appeal requested that the decision be set aside and the patent be maintained (as a main request) in the form as granted, or auxiliarily according to one of a first or second auxiliary request. Furthermore the appellant requested that the case be remitted to the opposition division if the Board wished for other objections to be addressed.
- IV. The Board summoned the appellant to oral proceedings and, in its communication sent as an annex to the summons, the Board stated that the subject-matter of claim 1 did not seem to be entitled to priority from P1 and was thus considered not new. With respect to the auxiliary requests, the Board considered that the subject-matter of claim 1 of both the first and second auxiliary requests contravened Article 123(2) EPC.
- V. With letter dated 15 May 2017 in response to this summons, the appellant filed an affidavit of Mr. Choi Kang Mo and requested that it be admitted into the proceedings. Further, the appellant submitted replacement first and second auxiliary requests for maintenance of the patent in an amended form.
- VI. Oral proceedings took place on 20 June 2017 in the absence of the appellant. The requests made by the appellant in writing in its ground of appeal (see point

III) and subsequent letter (see point V) remained unchanged. It thus requested:
that the decision under appeal be set aside and the patent be maintained as granted (main request);
auxiliarily that the patent be maintained in amended form on the basis of auxiliary requests 1 or 2 filed with letter dated 15 May 2017.

Furthermore, it requested that the case be remitted to the opposition division if the Board wished for other objections to be addressed and that the affidavit of Mr. Choi Kang Mo be admitted into the proceedings.

VII. Claim 1 of the main request reads as follows:

"A washing machine comprising:
a tub (2) configured for holding washing water therein;
a drum (3) rotatably arranged in the tub (2), a motor mounted on a rear wall of the tub, the motor having a rotor (5) and a stator (6);
a bearing housing (7) including:
a bearing supporting part (7a) holding a bearing to support a shaft (4) of the motor; and
a stator fastening part (7b) allowing the stator to be mounted thereon and extended in a radial direction from the bearing supporting part, characterised in that the stator fastening part (7b) has alternate outward radial direction extensions from a front part and a rear part of the cylindrical bearing supporting part (7a) in a circumferential direction connected at edges of the extensions perpendicular to the extensions."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the feature concerning the bearing housing reads as follows:

"bearing housing located at a central part of the rear wall of the tub, including:"

Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the feature concerning the bearing housing reads as follows:
"bearing housing integrated with the rear wall of the tub and including:"

VIII. The arguments of the appellant can be summarized as follows:

Affidavit

The affidavit should be admitted into the proceedings because it explained why P1 should not be interpreted as disclosing the tub and the bearing housing as a single piece.

Main request - Novelty

The subject-matter of claim 1 of the main request had a valid right to priority from P1. The skilled person taking into consideration the prior art disclosed in Figure 2 as well as paragraphs 17 and 19 would have considered that a tub made as a single unit made no sense, because such a unitary tub would need to have been reinforced with a supplementary bracket which was not present in the disclosure of the invention. Moreover, the tub in P1 was made of separate elements, the rear of the tub 58 and the side section 59. This was clearly visible in Figure 4, as this disclosed the complete element 58. In addition, Figure 4 showed what was to be understood from Figure 3 and allowed the skilled person to identify and correct two obvious errors and one inconsistency present in Figure 3:

- that the rear part of the tub 58 was not integral with the side section 59 of the tub 60,
- the bearing housing was not contiguous with the tub rear wall but was separate and subsequently integrated,

- fastening holes 66 should have been interpreted as part of the bearing housing as they were depicted as being separate from the rear wall 58.

The priority was valid such that the public use cited against claim 1 was not prior art.

Auxiliary Requests

The subject-matter of claim 1 of the first and second auxiliary requests did not extend beyond the content of the application as filed, such that the requests should be admitted. The disclosure of the amended features of these requests was to be found in paragraphs 30 and 31 of the application as filed.

Reasons for the Decision

Main Request

1. Admittance of the affidavit by Mr Choi
- 1.1 The affidavit contains an explanation of the background to the contents of P1 as seen by Mr Choi, one of the inventors named in P1 and an employee of the appellant. The Board has no reason to doubt that, as stated in point 1 of the affidavit, Mr. Choi is a person who knows the washing machine production industry very well. However, for the purpose of assessing the unambiguous disclosure of P1 Mr Choi's point of view is not the same as that of an impartial skilled person reading P1 to assess its content. Mr Choi, as an inventor named in P1, may indeed have a particular view of how he had understood P1 and what P1 was intended to convey to a reader, but this does not mean that an independent skilled person confronted with P1 receives the same information. Thus, the Board must assess the contents of P1 in an impartial manner from the

perspective of an independent skilled person, whereby the statements of Mr Choi do little to assist in this process.

1.2 It is also noted that the affidavit was filed for the first time with the appellant's letter of 15 May 2017 in reply to the Board's communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) dated 14 February 2017. The affidavit does not address an issue taken up by the Board for the first time in its communication, but simply constitutes new evidence filed in respect of the contents of the priority document P1, a point which had already been raised with the notice of opposition.

1.3 At least since the affidavit is not *prima facie* relevant for assessing the knowledge of the skilled person when reading P1, the Board exercised its discretion under Article 13(1) RPBA not to admit the affidavit of Mr Choi into the proceedings.

2. Priority

2.1 According to Article 87(1) EPC 1973 the right of priority may be claimed only in respect of the same invention. Following the opinion of the Enlarged Board of Appeal in G2/98 (OJ 2001, 413), the requirement of "the same invention" means that the skilled person can derive the subject-matter of the claim in question directly and unambiguously, using common general knowledge, from the previous application as a whole.

2.2 In the present case, determining whether the same invention is disclosed in P1 involves, at least in part, determining whether or not it is directly and unambiguously derivable from P1 that a bearing housing

includes a stator fastening part, as defined in claim 1.

2.3 The Board finds that Figure 4 of P1 does not unambiguously disclose a separate item or element 58, termed the rear of the tub (see e.g. translation of P1 on paragraph 33), that can be seen as a bearing housing. Whilst Figure 4 indeed depicts only a disc-shaped element 58, it is clear for the skilled person when taking into account the whole disclosure of P1 that this rear of the tub 58 is itself an integral part of the tub 60 formed in one piece therewith, and not a part which is integrated in some other way. Figure 3 discloses items 58 and 59 as making part of the tub 60 by using the same hatching for both, and displaying no separation line between them. In addition, the Figure shows the corresponding reference signs in a way that the skilled person would interpret as items 58 and 59 being sub-items of the item 60, (i.e. the tub). Further, the brief description of the drawings on page 14-4 states that "Figure 4 illustrates an oblique drawing of the tub", which further points to Figure 4 showing a part of item tub 60 and not in some way being a separate item that would need to be coupled to the rest of the tub.

2.4 Paragraphs 30 and 33 of P1 also describe that the tub 60 comprises a front part (which is not shown) as well as the side sections 59 and rear section 58 and that the through hole 71 for the shaft 64 is formed in the centre of the rear 58 of the tub, thus giving the impression that the tub is one single piece. While it is true that the expression "integrated with" as referred to in paragraphs 27, 33, 38, 40 might be referring to the action of integrating two pieces together in the sense of an attachment of one part to

another, the skilled person would not be able to interpret "rear of the tub integrated with a bearing housing" or "bearing housing integrated with the rear of the tub" so as to mean two different parts put together, at least not unambiguously. Such an interpretation of P1 would also not be consistent with the rest of the description and Figure 3 of P1.

- 2.5 The Board agrees that Figure 3 contains obvious errors and inconsistencies. However, the Board considers that the skilled person faced with Figure 3 would not then turn to Figure 4 and immediately identify two obvious errors and one inconsistency in Figure 3. It appears at least as plausible (if not more so), in light of the description of P1, that one obvious error would be seen, in particular that the fastening holes are integral with the tub rear wall and should therefore not have a dividing line. These parts of the drawing are very small as compared to the bearing housing 70 shown to be formed in one piece with the rear wall 58 which is far larger. This interpretation is also supported by paragraph 41 that refers to the fastening holes as being the screw fastening holes "of the tub" rather than merely of a rear wall thereof.

The interpretation of the appellant that the bearing housing is not unitary with the tub would require more corrections or create even more inconsistencies:

- if the whole rear of the tub would be a separate item acting as the bearing housing, a dividing line between the side section and the rear section of the tub would be required in addition to the correction of the inconsistency with the fastening holes;
- if the bearing housing were to be divided from the rear wall in the way suggested on page 5 of the

letter dated 15 May 2017, then this would create more inconsistencies with Figure 4 such as the lack of a hatched surface in Figure 3 representing the thickness of the reinforcing ribs.

The Board also notes that P1 discloses a tub according to the state of the art in Figure 2 and paragraphs 17 and 24, the rear and side sections of which are made of a single piece and that Figure 2 contains also the aforementioned inconsistency in the fastening holes, which are (wrongly) separated from the rear of the tub.

- 2.6 The embodiment of Figure 2 in P1 concerns a washing machine according to the prior art and discloses a bracket 21 "to reinforce the rigidity of the tub" and "to insure that the tub is firmly fixed to the rear" as stated in paragraph 19. The appellant is of the opinion that it would make no sense for the skilled person in the art to eliminate the bracket and make the rear of the tub and the bearing housing in a single piece as this would make the tub weaker. The appellant considers that the only logical solution for a skilled person reading P1 would be to infer the existence of a distinct bearing housing which incorporates the reinforcing ribs with the stator fastening holes and which is integrated with the rear of the tub. The Board cannot follow this argument as the disclosure of P1 as a whole contradicts this. As stated in paragraphs 24 to 26 of P1, the problem to be solved in P1 seems to be not only to reinforce the strength between the tub and the bearing housing but also to simplify the assembly process of tub and drum. It is stated in paragraph 41 that the motor (stator) is directly fastened to the screw fastening holes of the tub, thus the stator is mounted directly to the tub and not to a separate distinct bearing housing. Paragraph 41 also states that this direct mounting of the motor to the tub does not

require a bracket, which makes the assembly simpler, cheaper and requires less parts.

2.7 From the whole disclosure of P1, the skilled person would thus infer that the tub side section 59, the tub rear section 58 and the bearing housing 70 are formed as a unitary element of continuous material and that the screw fastening holes for the stator are formed in the tub.

2.8 The subject-matter of claim 1 is thus not directly and unambiguously derivable from P1 as a whole, since P1 does not disclose the feature "a bearing housing (7) including: [...] a stator fastening part (7b)", such that the subject-matter of claim 1 does not have a right to priority from P1.

3. Novelty

3.1 Since it was not contested by the appellant that, in the event that the subject-matter of claim 1 lacked a right to priority from P1, the washing machine with model number WD-R100C constituted a public prior use, as exemplified in Appendices A, B and C, and comprised all features of claim 1 of the patent in suit, and since the Board finds no reason to conclude otherwise, the subject-matter of claim 1 lacks novelty (Article 54(1) EPC), as a result of which the appellant's main request is not allowable.

Auxiliary Requests

4. Admittance of the first and second auxiliary requests

4.1 These requests were filed in reply to the communication of the Board. According to Article 13(1) RPBA, it lies within the discretion of the Board to admit any

amendment to a party's case after it has filed its grounds of appeal or reply, as to which it is stated that "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." Hence, such provisions apply to the auxiliary requests.

- 4.2 The first auxiliary request is based on the main request with the addition of the passage "located at the central part of the rear wall of the tub", which is based on paragraph 30 of the A2-publication (page 14, line 6 of the application as filed) together with the adjective "located". Contrary to the argument of the appellant, the Board considers that it is not only the location of the bearing housing with respect to the hub that is disclosed as a separate feature but that all other aspects related thereto are equally relevant in the context disclosed. The original verb "to include" as it was disclosed in paragraph 30 additionally conveys, in the context of the application, the idea of the bearing housing being part of the tub, which is not present in "located", which just establishes a spatial relationship between both of these.

Moreover, this paragraph belongs to a longer passage disclosing the embodiment of Figures 4 to 9 of the invention comprising further features disclosed in combination, which are however not present in claim 1. These features include *inter alia* the housing made of metal, the tub of plastic and that both are integrated through injection-moulding. These features are disclosed in a functional and structural relationship with the feature "integrated with" in claim 1 and involve a specific manner of integration within the

context of the embodiment. Other possibilities of integration are not disclosed.

4.3 Thus, the mere addition of the feature "located at the central part of the rear wall of the tub" in claim 1 does not correspond to the features which are disclosed in combination with each other within the particular context of that embodiment. Accordingly an inadmissible intermediate generalisation of the disclosed embodiment results. A more general disclosure corresponding to the combination of only those features now defined in claim 1 is not to be found elsewhere.

4.4 The second auxiliary request is based on the main request with the addition of the passage "integrated with the rear wall of the tub" from paragraph 31 of the A2-publication (page 14, line 11 of the application as filed). As with the first auxiliary request, this paragraph also belongs to a longer passage disclosing the embodiment of Figures 4 to 9 of the invention which comprises further features disclosed in combination, which are however not included in claim 1. These features include *inter alia* the housing made of metal, the tub of plastic and that both are integrated through injection-moulding. These features are disclosed in a functional and structural relationship with the feature "integrated with" in claim 1 and involve a specific manner of integration within the context of the embodiment. Other possibilities of integration are not disclosed.

4.5 Thus, the mere addition of the feature "integrated with the rear wall of the tub" does not correspond to all the features disclosed in combination with each other within the particular context of that embodiment. Accordingly an inadmissible intermediate generalisation

of the disclosed embodiment results. A more general disclosure corresponding to the combination of only those features now defined in claim 1 is not to be found elsewhere.

- 4.6 Since the subject-matter of claim 1 of the first and second auxiliary requests thus at least *prima facie* fails to fulfil the requirement of Article 123(2) EPC, the Board exercised its discretion under Article 13(1) RPBA not to admit these requests into the proceedings.

Request for remittal

- 4.7 Since the main request is not allowable and the first and second auxiliary requests are not admitted, there is no request in the proceedings upon which remittal of the case to the department of first instance can be ordered. The request for remittal is thus rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated