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**Datasheet for the decision  
of 14 May 2019**

**Case Number:** T 1391/15 - 3.5.03

**Application Number:** 09167412.7

**Publication Number:** 2157491

**IPC:** G05D22/02, E04B1/70, F26B25/22

**Language of the proceedings:** EN

**Title of invention:**  
System for dehumidifying walls

**Patent Proprietor:**  
Leonardo Solutions S.r.l.

**Opponent:**  
ECODRY Systeme GmbH

**Headword:**  
System for dehumidifying walls/LEONARDO

**Relevant legal provisions:**  
EPC Art. 100(a), 100(b), 100(c), 56, 69(1), 111(1)

**Keyword:**  
Main request: sufficiency of disclosure (yes), added-subject-matter (no), inventive step (no)  
Auxiliary requests: case remitted for further prosecution

**Decisions cited:**

G 0009/91, T 1646/12

**Catchword:**



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Case Number: T 1391/15 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 14 May 2019**

**Appellant:** ECODRY Systeme GmbH  
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**Respondent:** Leonardo Solutions S.r.l.  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 11 May 2015 rejecting the opposition filed against European patent No. 2157491 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** F. van der Voort  
**Members:** T. Snell  
O. Loizou

## **Summary of Facts and Submissions**

- I. The present case concerns an appeal of the opponent (henceforth, "appellant") against the decision of the opposition division rejecting its opposition filed against European patent no. EP 2 157 491. The opponent invoked the grounds for opposition pursuant to Article 100(a), (b) and (c) EPC, which are all maintained in these appeal proceedings.
- II. The appellant requests that the decision under appeal be set aside and that the patent be revoked in its entirety.
- III. The patent proprietor (henceforth, "respondent") requests as its main request that the appeal be dismissed. Alternatively, the respondent requests that the patent be maintained in amended form on the basis of the claims of one of the first to thirteenth auxiliary requests, all as filed together with the reply to the statement of grounds of appeal. The first to tenth auxiliary requests were already filed during the opposition procedure in response to the notice of opposition.
- IV. The following documents are relevant to the board's decision:  
  
D1: US 2006/0217934 A1  
D9: DE 4427245 A1  
D10: WO 03/062546 A1
- V. In the impugned decision, the opposition division held, inter alia, that the subject-matter of claim 1 was new with respect to the disclosure of D1.

In support of the appeal, the appellant submitted new documents D9 and D10 to support attacks with respect to inventive step.

VI. In a subsequent submission dated 22 March 2019, the respondent provided a dictionary definition of the term "profile" from the Merriam-Webster online dictionary ([www.merriam-webster.com/dictionary](http://www.merriam-webster.com/dictionary)).

VII. Oral proceedings were held on 14 May 2019 in the presence of both parties.

At the end of the oral proceedings, the chairman announced the board's decision.

VIII. Claim 1 of the main request, i.e. the patent as granted, reads as follows:

"System for dehumidifying walls that comprises at least one apparatus (2) for dehumidifying walls that incorporates:

- wall-dehumidifying means (3) that is active for promoting the dehumidification of at least a portion of wall, and

- at least a control unit (4) that is active on said wall-dehumidifying means (3) to enable operation to be monitored,

the apparatus (2) further comprising at least a communication module (5) that is at least suitable for receiving instructions from a remote unit (6), said instructions being sent to the control unit (4) to modify the operating modes of the apparatus (2) for wall dehumidification,

the system being **characterised in that**

said apparatus (2) further comprises a memory (7) containing at least a dehumidifying profile, said

control unit (4) being active on the wall-dehumidifying means (3) to monitor the wall-dehumidifying means (3) in function of the set dehumidifying profile, wherein the control unit (4) is active on said memory (7) to modify the set dehumidifying profile in function of the instructions received from the remote unit (6), wherein the communication module (5) is also suitable for transmitting information to the remote unit (6) relating to the operation of the apparatus (2), wherein said system further comprises at least a humidity sensor (200) that is operationally in communication with the control unit (4) to transmit the detected parameters, said detected parameters being used by the control unit (4) for comparison with the set dehumidification profile and modifying the operation of the apparatus (2) in function of the differences."

IX. In view of the board's decision, there is no need to reproduce the wording of the claims of any of the auxiliary requests.

### **Reasons for the Decision**

1. *The ground for opposition pursuant to Article 100(c) EPC*

1.1 The amendment from "movements" to "differences"

1.1.1 The present patent derives from an application originally filed in Italian, together with an English language translation (Article 14(2) EPC). The text of the application as filed within the meaning of the EPC is the Italian text (Article 70(1) EPC).

- 1.1.2 In the application as filed, claim 7 includes the term "spostamenti", which was translated into English as "movements", i.e. the normal translation of this term. This term was subsequently amended to "differences". In this respect, the respondent argues that in the Italian language application documents as filed, the term "spostamenti" in claim 7 was obviously incorrect and to be replaced by the term "scostamenti" (i.e. "differences"). The respondent argues that this amendment is an obvious correction within the meaning of Rule 139 EPC. The opposition division agreed.
- 1.1.3 The appellant however disputes that this amendment is a correction which was so obvious that nothing else could have been intended.
- 1.1.4 In the board's assessment, it is plausible, even perhaps probable, that the term "spostamenti" is erroneous. However, considering that the term spostamenti/movements could meaningfully in this context refer to the movements of the apparatus over the wall (cf. e.g. paragraphs [0057] and [0058] of the patent), the strict conditions for allowing the correction under Rule 139 EPC do not exist.
- 1.1.5 That notwithstanding, the board considers that the overriding issue is in fact whether or not this amendment complies with Article 123(2) EPC. In this respect, even if an amendment is not an obvious linguistic correction within the meaning of Rule 139 EPC, it may still be allowable under Article 123(2) EPC if the application documents as filed provide a direct and unambiguous basis for the amendment, taking into account matter which is implicit to a skilled person using common general knowledge.

1.1.6 In the present case, the application concerns a system not merely for monitoring but also for controlling a dehumidifying process (cf. e.g. paragraph [0030] of the patent or of the application as filed, EP 2157491 A). The skilled person would understand that the control and monitoring unit uses feedback, e.g. of humidity values, to achieve a desired dehumidifying profile (cf. paragraph [0032]). The skilled person reading the phrase in claim 1 "said detected parameters being used by the control unit (4) for comparison with the set dehumidification profile and modifying the operation of the apparatus (2)" would infer that the detected parameters (including at least a humidity value) are compared with the set dehumidification profile and the operation of the apparatus modified accordingly.

1.1.7 With respect to the expression "in function of the differences" in claim 1, the board considers that "differences" in this context fairly must be interpreted as the differences resulting from the comparison between the set dehumidifying profile and the detected parameters. With respect to Article 123(2) EPC, it would be clear to the person skilled in the art reading the application as filed that a comparison of the set dehumidifying profile with parameters would implicitly result in a difference or differences. It is further common knowledge that a feedback control system operates on the basis of convergence such that the difference or differences resulting from a comparison between desired values and actual values tends towards zero. Consequently, the board concludes that the expression "in function of the differences" does not result in the skilled person being presented with any new information not directly and unambiguously derivable from the application as filed, taking into



account matter which is implicit to a skilled person using common general knowledge.

- 1.1.8 The board therefore concludes that the amendment complies with Article 123(2) EPC.
- 1.2 The expressions in claim 1 "to be monitored" and "to monitor"
  - 1.2.1 The second objection of the appellant with respect to Article 123(2) EPC concerns the wording in claim 1 "to enable operation to be monitored" and "said control unit being active ... to monitor ...". The Italian text as filed uses the wording "unità di controllo ... per consentire un controllo di funzionamento".
  - 1.2.2 The appellant argues that the term "monitor" implies a display of measured values, states or errors ("von Messwerten, von Zuständen oder Abweichungen"), which the English term "control" or the Italian term "controllare" does not.
  - 1.2.3 In the board's view, the term "monitor" is a reasonable translation of the term "controllare" when interpreting this term in the sense of checking the state of a process rather than (actively) controlling it. In this respect, the patent clearly discloses monitoring and controlling the process (cf. e.g. paragraphs [0029] and [0032]). Furthermore, apparatus (2) of the patent also has means for displaying humidity data (cf. paragraphs [0211] to [0213] of the patent). Consequently, the board concludes that no subject-matter has been added by these amendments (cf. Article 123(2) EPC).

1.2.4 Hence, the ground for opposition pursuant to Article 100(c) EPC does not prejudice the maintenance of the patent.

2. *The ground for opposition pursuant to Article 100(b) EPC (cf. Article 83 EPC)*

2.1 The appellant argues as follows: (i) the skilled person is not taught how the operation can be monitored ("überwacht") since no operational parameters [of the apparatus] are sent to the control unit; (ii) the skilled person is not able to understand the feature "dehumidifying profile" since no examples are given explaining what values this profile contains, e.g. temperature, absolute and relative humidity.

2.2 Re (i): The board refers to paragraphs [0037] and [0038] of the patent, whereby the operation data includes e.g. the charge level of the buffer battery, which is an operation parameter of the apparatus. In general, the skilled person would be in a position to obtain information from the apparatus by means of sensors depending on the nature of the apparatus itself, using common general knowledge. Furthermore, it is clear here that the operation is also monitored by observing the effect caused by a machine (i.e. detected ambient temperature and humidity) as well as the parameters of the machine itself. Consequently, the board considers in this respect that the disclosure is sufficiently clear and complete for a skilled person to carry out the invention.

Re (ii): In the view of the board, it would be clear to the skilled person that a dehumidifying profile at least comprises parameters pertaining to the state of humidity of the wall. Those parameters suggested by the

appellant would be well-known to the skilled person on the basis of common general knowledge and be sufficient to enable the skilled person to carry out the invention.

The board therefore finds the appellant's arguments unconvincing.

2.3 Hence, the ground for opposition pursuant to Article 100(b) EPC does not prejudice the maintenance of the patent as granted either.

3. *The ground for opposition pursuant to Article 100(a) EPC - inventive step with respect to D1 (cf. Article 56 EPC)*

3.1 The patent concerns a system for dehumidifying walls.

Using the wording of claim 1, D1 discloses (except for the feature which is struck through):

A system for dehumidifying walls that comprises at least one apparatus for dehumidifying walls that incorporates:

wall-dehumidifying means ("fans, dehumidifiers") that is active for promoting the dehumidification of at least a portion of wall (cf. the abstract and below, "Feature (i)", point 3.3 ff.),

and

at least a control unit (210) that is active on said wall-dehumidifying means to enable operation to be monitored (cf. paragraph [0036] and Fig. 1),

the apparatus further comprising at least a communication module that is at least suitable for receiving instructions from a remote unit (idem),

said instructions being sent to the control unit to modify the operating modes of the apparatus for wall dehumidification (idem),

wherein

said apparatus further comprises a memory containing at least a dehumidifying profile, said control unit being active on the wall-dehumidifying means to monitor the wall-dehumidifying means in function of the set dehumidifying profile (cf. paragraph [0041] and below, "Feature (ii)", point 3.3 ff.),

~~wherein the control unit is active on said memory to modify the set dehumidifying profile in function of the instructions received from the remote unit,~~

wherein the communication module is also suitable for transmitting information to the remote unit relating to the operation of the apparatus (cf. paragraph [0049]),

wherein said system further comprises at least a humidity sensor that is operationally in communication with the control unit to transmit the detected parameters (idem),

said detected parameters being used by the control unit for comparison with the set dehumidification profile and modifying the operation of the apparatus in function of the differences (cf. paragraph [0041]).

3.2 The board concludes that D1 does not disclose the feature "wherein the control unit (4) is active on said memory (7) to modify the set dehumidifying profile in function of the instructions received from the remote unit (6)".

3.3 The respondent argues that D1 additionally does not disclose the following further features:

Feature (i): a wall dehumidifying system and wall dehumidifying means, since D1 does not disclose a wall dehumidifying system/means within the meaning of the patent, but an air dehumidifying system/means; and

Feature (ii): a dehumidifying profile within the meaning of the patent, since this implicitly requires a relationship with time, an aspect which is absent from D1.

3.4 With respect to these alleged distinguishing features, the appellant argues that Article 69(1) EPC requires that the claim has to be interpreted in the light of the description, as follows:

In the case of feature (i), the description describes a system for dehumidifying walls which are humid as a result of capillary action (cf. paragraph [0024]). Air dehumidifiers do not dry out such walls, but actually exacerbate the situation by intensifying the capillary action. Therefore, the skilled person would not consider a system such as D1 as a dehumidifying system within the meaning of the present patent and of claim 1.

In the case of feature (ii), the patent concerns a dehumidification process over time which is

continuously monitored (cf. paragraph [0029]). In the described example given of a wall with frescoed surfaces (cf. paragraph [0031]), a rapid dehumidification would cause damage to the frescoes. A profile, according to one dictionary definition, is "a set of data often in graphic form portraying the significant features of something" (cf. point VI above). The "significant feature" of a dehumidifying profile which enables continuous monitoring is that it has to reflect a relationship between the state of the humidity of the wall and time. A single value representing the end point of the process such as in D1 having no relationship with time cannot therefore be considered as a profile within the meaning of the patent and claim 1.

3.5 Re Article 69(1) EPC: In accordance with case law, Article 69(1) EPC concerns the extent of protection, primarily for the purposes of determining compliance with Article 123(3) EPC and in national infringement proceedings (cf. T 1646/12, point 2.1 of the reasons). That notwithstanding, as regards claim interpretation, the description may be used to interpret an unclear granted claim. However, where a claim is not per se unclear, but merely broad, additional limitations cannot normally be inferred merely by invoking Article 69(1) EPC. In the present case, the board does not consider claim 1 to be unclear, but broad. The features of the claim should therefore be given their normal meaning as would be understood by the person skilled in the art.

3.6 Re feature (i): Claim 1, which as said is not per se unclear, is not limited to any particular type of wall or dehumidification system/means, and neither is the patent (cf. paragraphs [0001] and [0002]), even if the

detailed embodiment concerns a system based on the electromagnetic or electrophysical principle (cf. paragraph [0020] ff.). In particular, there is no limitation in claim 1 to walls which are humid as a result of capillary action. The wall may for example be a newly-built wall which is not humid as a result of capillary action. Consequently, the term "wall-dehumidifying means" must be construed broadly, and thus embraces any type of dehumidifying means such as the means for dehumidifying the air next to the wall in accordance with D1.

3.7 Re feature (ii): Claim 1 is not limited to dehumidifying walls slowly or to monitoring being carried out continuously. In fact, it contains no feature implying a relationship with time at all. The term "dehumidifying profile", which the board agrees means "a set of data ... portraying the significant features of something", therefore also has to be construed broadly. A set of humidity values at various locations in the wall, or a set consisting of different parameters relative to a dehumidifying operation such as temperature, relative humidity and absolute humidity, are regarded as "dehumidifying profiles" (cf. D1, paragraph [0032]), as is also a set of "target drying levels" (cf. D1, paragraph [0041]).

3.8 As said, the only distinguishing feature with respect to D1 is therefore "wherein the control unit (4) is active on said memory (7) to modify the set dehumidifying profile in function of the instructions received from the remote unit (6)". The appellant submits that this feature is also disclosed in D1, referring to paragraph [0036]. However, in paragraph [0036], it is only stated that controlled switching can be carried out from a remote computer, not that

anything which could be regarded as the set dehumidifying profile could be modified. In the abstract of D1, it is stated that "a project supervisor at any location can download information", i.e. not explicitly parameters.

3.9 The problem to be solved can be regarded as either how to avoid a technician having to be present in order to modify the target humidity parameters, or how to easily modify the target parameters when the apparatus 108 of D1 is located in a confined space.

3.10 The board considers that, in order to solve either of these problems, the skilled person would regard it as obvious to download these parameters from a remote location. In D1, it is already possible to download "information" from the remote location 310 (cf. the abstract). In the board's view, the skilled person would immediately recognise that parameters can be included as part of this information. The skilled person would thus without inventive skill arrive at the subject-matter of claim 1.

3.11 Consequently, the board concludes that the subject-matter of claim 1 does not involve an inventive step when starting out from D1 (Articles 100(a) and 56 EPC).

#### 4. *First to thirteenth auxiliary requests*

4.1 The first to tenth auxiliary requests were filed during the opposition procedure but in view of the decision of the opposition division to reject the opposition, there was no need to consider whether to admit them and consequently no need to examine them for compliance with the EPC. The eleventh to thirteenth auxiliary requests have been filed in response to the appeal.



The board notes further that the auxiliary requests on file contain a diverse range of additional features taken from the description and/or dependent claims and that, in the preliminary assessment of the board, newly-filed document D10 may represent the best starting point for examining inventive step in respect of claim 1 of several of the auxiliary requests, a document which has not yet been considered by the opposition division.

Finally, the appellant has not commented substantively on the auxiliary requests.

- 4.2 If the board were to admit any of these requests to the appeal proceedings, it would have to decide on matters for the first time, which is contrary to the main purpose of appeal proceedings, this being to give the losing party a possibility to challenge the decision of the opposition division on its merit, i.e. to review the correctness of the first instance decision (cf. G 9/91, OJ EPO 1993, 408, point 18 of the reasons).
- 4.3 For these reasons, the board considers that it is appropriate to remit the case to the opposition division for further prosecution, leaving it up to the opposition division to decide which of the auxiliary requests are to be admitted, as well as to decide whether to admit documents D9 and/or D10 (Article 111(1) EPC).

## **Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated