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**Datasheet for the decision  
of 29 January 2021**

**Case Number:** T 1453/16 - 3.2.06

**Application Number:** 10790991.3

**Publication Number:** 2519682

**IPC:** D06F58/04

**Language of the proceedings:** EN

**Title of invention:**

A LAUNDRY DRYER

**Patent Proprietor:**

Arçelik Anonim Sirketi

**Opponents:**

Whirlpool EMEA S.p.A.  
Electrolux Appliances Aktiebolag

**Headword:**

**Relevant legal provisions:**

EPC Art. 56  
RPBA Art. 12(4)  
RPBA 2020 Art. 13(1), 25

**Keyword:**

Inventive step - main request (no), auxiliary request 1 (no)  
Late-filed auxiliary requests - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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**Case Number:** T 1453/16 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 29 January 2021**

**Appellant:**

(Patent Proprietor)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 11 April 2016  
revoking European patent No. 2519682 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

<b>Chairman</b>	M. Harrison
<b>Members:</b>	M. Dorfstätter
	J. Hoppe

## **Summary of Facts and Submissions**

- I. An appeal was filed by the patent proprietor (appellant) against the decision of the opposition division revoking European patent No. 2 519 682. It requested that the decision under appeal be set aside (main request) or, as an auxiliary measure, that the patent be maintained in amended form according to one of auxiliary requests 1 to 6.
- II. Opponent 2 (respondent 2) and opponent 3 (respondent 3) requested that the appeal be dismissed.
- III. Thereafter, the company of opponent 1 (respondent 1) incorporated the one of respondent 2, leaving the parties to the proceedings being the appellant and respondents 1 and 3.
- IV. The following documents referred to by the parties are relevant to the present decision:
- |    |                 |
|----|-----------------|
| P1 | EP 1 783 266 A1 |
| D4 | EP 2 103 732 A1 |
- V. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion with respect to admittance of the requests and to novelty and inventive step of the subject-matter of the independent claim of each request respectively.
- VI. In a letter dated 10 September 2020, respondent 1 requested that auxiliary requests 2, 5 and 6 not be admitted into the appeal proceedings as they were not convergent with higher ranking requests. It also

requested that auxiliary requests 2, 3 and 4 not be admitted into the proceedings because they were either not admitted by the opposition division or withdrawn in the first instance proceedings.

VII. With a letter dated 14 September 2020 the appellant filed auxiliary requests 5A and 6A.

VIII. Oral proceedings were held before the Board on 29 January 2021, during which the appellant withdrew auxiliary requests 2, 4, 5 and 6.

IX. The final requests of the parties were as follows:

The appellant requested

that the decision under appeal be set aside and the patent be maintained as granted (main request),  
or as an auxiliary measure,

that the patent be maintained in amended form according to one of the following auxiliary requests in the given order:

- auxiliary requests 1 or 3, filed with the grounds of appeal,
- auxiliary request 5A, filed with letter dated 14 September 2020,
- auxiliary request 6A, filed with letter dated 14 September 2020.

The respondents requested that the appeal be dismissed.

X. Claim 1 of the main request reads as follows (including the feature-by-feature analysis adopted by the appellant in its grounds of appeal, further including the bullet points in the form of dashes as used in the patent as granted):

- A) "A laundry dryer (1) that comprises
- B) - a drum (2) wherein the laundry desired to be dried are placed, that is rotated around the horizontal axis thereof,
- C) - a loading port (3) disposed at the front side of the drum (2) providing the laundry to be loaded,
- D) - a bulkhead (4) surrounding the loading port (3) and providing the drum (2) to be borne from the front side and
- E) - a base unit (5) produced from plastic in single piece, installed under the drum (2) that supports the motor, the fan, the condenser and the other components required for the drying process,  
**characterized by**
- F) - a resting surface (11) disposed on the base unit (5), whereon the bulkhead (4) is placed,
- G) - at least one first connection member (6) disposed on the resting surface (11) and
- H) - at least one second connection member (7) disposed on the bulkhead (4), matching in configuration with the first connection member (6), and when installed to the first connection member (6) providing the base unit (5) and the bulkhead (4) to be secured to each other."

In claim 1 of auxiliary request 1, the following wording of granted claim 2 is appended to claim 1 of the main request:

**"further characterized by** the rail shaped first connection member (6) and the slide shaped second connection member (7) that is seated into the first connection member (6) by being slid during the movement

made from the top downwards while the bulkhead (4) is placed on the base unit (5)."

In claim 1 of auxiliary request 3, the following wording of granted claim 3 is appended to claim 1 of auxiliary request 1:

**"further characterized by** the second connection member (7) with almost "T" shaped cross section and the first connection member (6) that at least partially surrounds the second connection member (7)."

In claim 1 of auxiliary request 5A, the following wording of granted claim 4 is appended to claim 1 of auxiliary request 3:

**"further characterized by** a protrusion (8) disposed in front of the first connection member (6) having at least one hole (10) thereon and a housing (9) disposed in front of the second connection member (7) having at least one hole (110) thereon, that is seated on the protrusion (8)."

In claim 1 of auxiliary request 6A, the following wording of granted claim 5 is appended to claim 1 of auxiliary request 5A:

**"further characterized by** an extension (13) that extends from the rear surface of the bulkhead (4) towards over the base unit (5), having a recess (12) disposed thereon and a support (14) disposed on the base unit (5) whereon the recess (12) is seated."



XI. The appellant's arguments which are relevant for the decision may be summarised as follows:

Claim 1 of the main request was to be interpreted without referring to the description. The bullet point in the form of a dash at the beginning of feature F) together with the comma after the term 'base unit' made it clear that all that followed in feature F) referred to the resting surface. There was no need to consult the description to understand that features F) and G) defined that the bulkhead directly rested on the resting surface. If the claim were interpreted in the light of the figures, the drawings were, however, not to scale and included errors and simplifications. Reference sign 11 in Figure 4 was wrong. Figure 5 was equally wrong. Although depicted differently in the figures, there was in fact contact between the bulkhead and the upper surface 11 surrounding the first connection member 6. Additionally, there was contact between the bulkhead and the vertical walls in continuation of the resting surface 11, as depicted in Figure 6. The formulation 'produced from plastic in single piece' in feature E) had to be construed as meaning 'moulded in a single piece' because it referred to the process of producing. The formulation 'borne from the front side' in feature D) was to be interpreted as referring to a rotational bearing, which could take up forces in radial and axial directions.

The subject-matter of claim 1 was novel over P1. None of the figures in P1 showed that the lower portions of connecting members 17a and 17b came into contact with any part of the base. The front supporting member 12 of P1 had the purpose of taking up axial forces and this would not provide rotational support.

In terms of inventive step, the base shown in P1 could not be formed directly from plastic in a single piece because the structure was complicated and the seats 20 could not withstand the high axial forces they might be subjected to e.g. during tumbling if they were not made from metal; forming them of plastic, and thus larger and/or with stiffening ribs, would not fulfil the space requirements often present in a machine and thus taught the skilled person away from such a solution.

The additional features of claim 1 of auxiliary request 1 were also not known from P1. A 'rail-shaped' member referred to an element which was capable of guiding a 'slide-shaped' member; this was different from a male component simply inserted into a female counterpart.

Auxiliary request 3 should be admitted into the proceedings. The amendments therein were made as a reaction to the decision of the opposition division. This request could not have been presented in the proceedings before the opposition division. However, the same subject-matter as such was presented in the proceedings before the opposition division, but the division considered it necessary to include further features to establish novelty.

Auxiliary request 5A should be admitted into the proceedings. Claim 1 of this request was similar to the independent claim of auxiliary request 4 as filed in the opposition proceedings. The feature based on paragraph [0026] had been taken out of the claim, again due to the decision of the opposition division with regard to Article 123(2) EPC. By presenting auxiliary request 5A the requests on file were rendered convergent.

Auxiliary request 6A should be admitted into the proceedings. The subject-matter underlying this request was filed with auxiliary request 5 in the opposition proceedings. Auxiliary request 6A was also a combination of auxiliary requests filed earlier.

XII. The arguments of respondent 1 which are relevant for the decision may be summarised as follows:

A claim was always to be interpreted with some reference to the description. When reading a patent, the skilled person looked at the same time at the figures. It was not possible to produce the base unit as shown in the contested patent by moulding in a single step. Feature E) with its formulation 'produced from plastic in single piece' had thus to be construed broadly as covering bases made from several assembled pieces. The figures might be wrong but they were consistent. Features F) and G) were also to be interpreted broadly. In the figures, the bulkhead did not rest on the upper level of the resting surface of the base. Nor did it rest on the upper edge of the two adjacent rims. The bulkhead did thus not need to rest on the same part of the resting surface as the part where the first connection member was disposed.

The subject-matter of claim 1 of the main request was not novel over P1. The difficulties of producing the base of P1 were the same as for the base according to the patent. Neither could be made in a single piece. In both cases the skilled person had to determine the design and material thicknesses. In P1, member 12 was a supporting structure for the tub. It thus fulfilled the definition 'borne from the front side' in feature D). The bulkhead was supported on an inclined resting surface, which was embraced by claim 1. The formulation

'borne from the front side' in feature D) was not limited to being a rotational bearing; the drum bearing could be elsewhere.

If novelty over P1 were acknowledged, the problem to be solved would be merely how to cheaply produce the laundry dryer of P1. Plastic was the material of choice in this technical area. The skilled person would produce several parts by injection moulding and join them into a single piece. No high axial forces would occur. If necessary, the skilled person would use glass fibre reinforced plastic material in the right thickness. This was a mere routine measure.

The additional features of claim 1 of auxiliary request 1 were equally implemented in P1.

Auxiliary requests 3, 5A and 6A should not be admitted into the proceedings.

XIII. The arguments of respondent 3 which are relevant for the decision may be summarised as follows:

The wording of claim 1 was not immediately understandable. When interpreting the claim in this case, the skilled person had to refer to the wording of the claim and its interrelation with various features in the claim, but also to the description and the figures. The figures of the contested patent were clear enough to serve as a basis for interpretation. The 'resting surface' as used in features F) and G) was only specified in claim 1, without any definition of its specific shape. The definition thus embraced a distributed resting surface.

The subject-matter of claim 1 of the main request was not novel over P1. The use of plastics for the base of P1 was implicit. Feature E) was thus disclosed in P1. Feature D) with its formulation 'borne from the front side' included axial and/or rotational support.

If the use of plastics and a single piece construction for the base were not considered to be disclosed by P1 this was obvious when solving the objective technical problem of providing a cheap manufacturing method. To make the base of plastics was common general knowledge and also described in D4.

The further features of claim 1 of auxiliary request 1 were also known from P1 as the terms 'rail-shaped' and 'slide-shaped' were very broad.

Auxiliary requests 5A and 6A should not be admitted into the proceedings. The specific combination of granted claims as now arrived at in claim 1 of these requests had not been discussed in the proceedings before.

## **Reasons for the Decision**

### *Main request*

#### 1. *Claim construction*

In accordance with accepted case law of the Boards, for the purpose of assessing novelty and inventive step, a claim feature that is already clear from its wording or that can be understood on the basis of its relationship to other features of the claim, should not be interpreted by referring to the description or

drawings. However, if a granted claim is unclear and all other means of interpretation do not lead to a satisfactory result, the skilled person cannot but look for clarification in the description and the figures.

1.1 *Features F) and G)*

- 1.1.1 Feature F) defines 'a resting surface (11) disposed on the base unit (5), whereon the bulkhead (4) is placed'. Obviously, there is a need for interpretation of the terms 'disposed on' and 'placed' due to the context in which they are both used in the same feature. Similarly, the term 'disposed on' in feature G) needs interpretation, when it defines that 'at least one connection member (6) [is] disposed on the resting surface (11)'. The terms 'disposed on' (used twice) and 'placed on' might therefore be being used for similar or possibly even identical structural relationships. Furthermore, in feature F), it is not apparent to which preceding noun the term 'whereon' refers.

The appellant's argument that the bullet point in the form of a dash at the beginning of feature F) together with the comma after the term 'base unit' made it clear that everything which followed in feature F) referred to the resting surface, is not accepted. From a grammatical point of view, even with this comma, the word 'whereon' can still refer to the base unit. The bullet points merely structure the claim into subdivisions and provide better readability. They are understood to emphasise that the main features of the characterising portion are a resting surface, at least one first connection member and at least one second connection member. It cannot however be unambiguously derived from the use of bullet points alone that any term of the characterising portion should only refer to

the main feature within the subdivision. The bulkhead could thus be placed on the resting surface or the base unit (in the latter case including, but not limited to, the resting surface).

Features F) and G) cannot thus be interpreted from their wording alone even when read together. To arrive at a meaningful interpretation, the Board concludes that, in the present case, it is appropriate to refer to the description and the drawings.

- 1.1.2 Several passages deal with the first connection member and its relationship to the resting surface and the base unit.

In paragraph [0006], as opposed to the wording in the claim, it is stated that 'the resting surface [is] disposed on the base unit whereon the bulkhead is seated'. In paragraph [0023] the same wording as in claim 1 is used, stating that the 'resting surface (11) [is] disposed on the base unit (5), whereon the bulkhead (4) is placed'. Paragraph [0024] defines that 'the base of the bulkhead (4) is seated on the resting surface (11)'. The patent thus uses the different terms 'seated on' and 'placed on' to express a seemingly identical relationship between the bulkhead and the base unit. Neither of the two can however clarify whether the weight of the bulkhead directly rests on the resting surface.

As to the question of what is to be understood by the resting surface being 'disposed on' the base unit, neither paragraphs [0006] and [0023] nor any other passage of the description give any further details than claim 1 alone. The description therefore does not help in the interpretation of features F) and G).

- 1.1.3 In the figures several surfaces are denoted by the same reference numeral 11. On the one hand, in Figure 4 it is the lower surface partly surrounding the first connection member 6 (from now on referred to as the 'lower resting surface 11'), while in Figures 5 and 6 it is the upper surface (from now on referred to as the 'upper resting surface 11'). The Board notes that these two surfaces do not establish a continuous common surface as they are only connected via a vertical portion of the base unit and via the protrusion 8. From the figures and reference numerals it is thus still not derivable whether the first connection member 6 is arranged on the resting surface (in the sense that it is protruding therefrom). Figures 5 and 6 would support such an interpretation, but Figure 4 contradicts this understanding as the first connection member 6 does not protrude from the lower resting surface 11.
- 1.1.4 As regards the appellant's argument that reference numeral 11 in Figure 4 was wrong, this is not convincing. Figures 3 and 4 show the same embodiment of a base unit 5 and a bulkhead 4, in Figure 4 before and in Figure 3 after being secured to each other. As is apparent from Figure 3, the lower surfaces surrounding the housing 9 of the bulkhead 4 are in contact with what is denoted as the resting surface 11 in Figure 4. In other words, via these lower surfaces the bulkhead 4 rests on the lower resting surface 11. The Board thus cannot see why the reference numeral 11 should be wrong in Figure 4.
- 1.1.5 In accordance with the figures, and not disputed by the appellant, there is no contact between the "upper" resting surface 11 surrounding the first connection member 6 and any part of the bulkhead in proximity to



the second connection member 7. This is clearly visible in Figures 3, 5 and 7, all showing a recess surrounding the second connection member 7. Figure 3 also shows that, in the assembled state, this recess prevents any contact between the bulkhead and the upper resting surface 11 in this area.

The appellant argued that Figure 5 was wrong and there was in fact contact between the bulkhead and the upper resting surface 11 in an area surrounding the first connection member 6. This argument is, however not persuasive. Although it might be that in the product sold by the appellant (and which the appellant argued was intended to be represented by the figures in the patent), the bulkhead has a different shape and does not include a recess, this does not change what the skilled person infers from the patent drawings. With all figures showing the same recess, they are consistent with each other. The appellant's argument that the drawings were not to scale and included errors and simplifications, does not alter the Board's finding, since the drawings are precise enough to consistently determine which surfaces of the bulkhead and the base unit are in contact in the assembled state. In the embodiment shown in the figures, there is no contact between the upper resting surface 11 and the bulkhead 4.

This also applies to the two upper edges of the two vertical walls adjacent the "upper" resting surface 11 (as can best be seen in Figure 6). Contrary to the appellant's argument, these edges have no contact with the bulkhead 4. Figure 3 shows a clear gap between these parts after assembly.

- 1.1.6 The Board thus concludes that in the embodiment shown in the figures, the bulkhead 4 is in contact with the "lower", but not with the "upper" resting surface 11. In the light of the figures, feature G) is thus to be interpreted such that it is not in contradiction with the conclusions above. In order that the first connection member 6 can be disposed on the resting surface, this also cannot be restricted to the portion of the surface on which the bulkhead rests directly, otherwise the connection member would not be disposed on the surface but merely surrounded by it. Instead, the resting surface can extend to other parts of the base unit which do not have direct contact with the bulkhead.
- 1.2 *Feature E)*
- 1.2.1 The formulation 'produced from plastic in single piece' used in feature E) with respect to the base unit is linguistically incorrect. How the terminology 'in single piece' is to be understood cannot be derived from its literal meaning nor from other parts of the claim. It is therefore again appropriate to interpret this by referring to the description and the figures.
- 1.2.2 The description, however, merely repeats (in paragraph [0022]) the formulation used in claim 1. No other part of the description allows conclusions to be made about the way the base has been produced. The figures show a base that could be made by different production methods, including (but not necessarily being) injection moulding in a single step.
- 1.2.3 The appellant's argument that the formulation had to be construed more narrowly as meaning 'moulded in a single piece' because it referred to the process of production

is not accepted. That the part is 'produced from plastic' is understood by the Board as meaning 'made of plastic material'. This was also not contested by the appellant. However, whether the term 'produced' also refers to the words 'in single piece' is not clear from the wording as such. It could either mean that a single piece is created from the very beginning or that it is produced from one or more pieces of plastic and then formed into a single piece. The Board notes that further interpretations are equally conceivable, for example that the base is produced from plastic, which plastic was a single piece at the beginning but is not necessarily in the end. As explained above, it is thus appropriate to consult the description to interpret feature E). A formulation identical to feature E) is used in paragraph [0022], but no further explanation is given anywhere. The figures, and in particular Figures 3, 4 and 5, show a base unit that might or might not have been moulded in a single step. Neither the description nor the figures can thus support the appellant's understanding that feature E) should be read as 'moulded in a single step'.

- 1.2.4 The argument of the respondents that the formulation had to be construed broadly and thus as covering bases made from several assembled pieces because it was not possible to produce the base unit as shown in the contested patent by moulding in a single step, is also not accepted. As argued by the appellant, the bent ducts and undercuts can for example be produced by using expandable moulding cores. The feasibility considerations thus cannot support the respondents' broader understanding of feature E), which would cover any form of assembled base.

1.2.5 Therefore, the Board concludes that neither the appellant's narrower interpretation nor the respondents' broader understanding is to be followed. Instead, the Board interprets the formulation 'produced from plastic in single piece' as defining a base that is made of plastics and that, in its finished state, constitutes a single piece. This can be achieved by moulding the base in a single step but also by permanently joining several parts to form a single piece, e.g. by gluing.

1.3 *Feature D) (borne from the front side)*

The appellant argued that 'borne from the front side' is to be interpreted as referring to a rotational bearing and can thus take up forces in radial and axial direction. This is however not persuasive. When again referring to the figures, it is evident that the bulkhead cannot be the single (front) bearing for the drum. Due to technical constraints in making the rotating drum airtight to the surroundings, there will have to be some kind of gasket between the opening in the bulkhead and the front opening of the drum. With this gasket necessarily exhibiting some kind of compressibility, another form of a bearing needs to be present to support the drum. This equally applies to the axial forces referred to by the appellant.

1.3.1 The Board thus concludes that the formulation in feature D) 'borne from the front side' is to be interpreted more broadly than argued by the appellant and thus covers laundry dryers in which the drum is supported by several means. The support on the front side is also not limited to the bulkhead.

2. *Article 100(a) EPC - Inventive step*

The ground for opposition under Article 100(a) and 56 EPC prejudices maintenance of the patent as granted. It is obvious for a person skilled in the art, when building a base unit for a laundry dryer according to P1, to make it of plastics in a single piece, thereby arriving at a laundry dryer according to claim 1 as interpreted by the Board.

2.1 *Distinguishing features*

2.1.1 *Features F) and G) (resting surface)*

P1 discloses features F) and G) since the term 'resting surface' and the expression that the first connection member is 'disposed' thereon need to be interpreted broadly as laid out above.

Since the resting surface can comprise several portions, the resting surface can be identified in Figure 1 of P1 as including not only the surface above the air duct but also the vertical surface at the side of it, on which vertical surface the seat 20 is disposed. The seat 20 thus constitutes a first connection member disposed on the resting surface.

The appellant's argument that no figure in P1 showed that the lower portions of connecting members 17a and 17b came into contact with any part of the base, is not persuasive. With the interpretation of features F) and G) as explained above, there is no need that the bulkhead comes into contact with the base at the exact position of the first and second connection members. It is sufficient that the bulkhead rests on the base on a resting surface which itself can be distributed over

several parts of the base. The Board also concludes that the front supporting member 12 has contact with the base at least on the horizontal surface above the opening of the heat exchanger and at the flange of the air duct (best seen in Figure 1). Other arrangements are not technically realistic, even if (arguably) theoretically possible.

The Board thus concludes that P1 shows "a resting surface disposed on the base unit whereon the bulkhead is placed". A first connection member (the seat 20) is disposed on (a part of) the resting surface. Features F) and G) are hence implemented in P1.

#### 2.1.2 *Feature E) ("in single piece")*

It cannot be ascertained whether the base depicted in Figure 1 of P1 fulfils feature E) as interpreted above, which makes it a distinguishing feature.

With regard to the appellant's argument that the side wall of the base in Figure 1 of P1 exhibited a flange and that this was an indication that it was made from several parts, the Board cannot recognise any such flange, or at least no clear indication that such line represents a flange. Due to the somewhat schematic nature of the drawings, the Board can conclude only that it cannot be derived from P1 how many parts the base is made of nor how they are joined together.

However, as regards the appellant's further argument that it was not apparent that the base unit as shown in P1 could even be made in a single piece, this is not accepted. As laid out above, the Board has a broader understanding of feature E) than what was argued by the appellant. To fulfill this feature, it would thus be

sufficient if the base in P1 were produced from several parts of plastics and became a single piece by e.g. welding or gluing, albeit even this cannot be derived from P1.

The Board thus concurs with the appellant that it cannot be excluded that the base comprises several parts that are joined together in a detachable manner.

2.1.3 *Feature E ("produced from plastic")*

It cannot be directly and unambiguously derived from P1 which material is used for the base described therein. In the Board's opinion, when looking at Figure 1 of P1 a skilled engineer would immediately contemplate using plastics to produce the base as shown therein. This is however by no means implicit (as was argued by respondent 3). It might even be unlikely that an engineer would actually use other materials than plastics, but such alternative materials (e.g. alloy castings) do exist and their use is not technically unfeasible.

The appellant's argument that the seats 20 in P1 were not suitable to be produced from plastic in a single piece is not persuasive. The Board does not accept that the seats 20 need to withstand high axial forces of the drum and thus have to be made from metal. It is not apparent that any forces due to tumbling of the laundry during the operation of the dryer could become so high that the seats could not be dimensioned sufficiently when being made of plastics.

For the sake of completeness, the Board notes that the statement of the opposition division in its decision (see page 5, first full paragraph) that a base unit

made of a metal alloy would have a different structure is no more than an allegation, since no indication is given as to how and why such a structure would differ. The same applies to the contention of respondent 3 in its reply to the appeal grounds (see item 3, second paragraph) that the construction of the reinforcement ribs and the whole structure would not allow another conclusion than that the base unit was made from plastic. The Board cannot see which aspect of the base unit in Figure 1 would look different if it were made of a material other than plastics, e.g. of an aluminium alloy.

Neither the details shown in Figure 1 of P1 nor the general knowledge of the skilled person can thus render the use of plastics the only conceivable material for the base, a condition that would have to be fulfilled if an implicit disclosure were to be accepted. However, plastics is found to be a suitable material for the base.

#### 2.1.4 *Feature D) ("borne from the front side")*

With the interpretation as arrived at above, P1 discloses feature D).

The appellant's argument that the front supporting member 12 of P1 had the object of taking axial forces and that member 12 would not provide rotational support, is not persuasive. Feature D) does not exclude further functions of the bulkhead and does not specify that it must provide a bearing for the drum.

The Board thus concludes that the drum in P1 is 'borne from the front side' by the front supporting member 12.



- 2.1.5 As a consequence of the foregoing, the subject-matter of claim 1 differs from the laundry dryer shown in P1 only in respect of the first clause of feature E), i.e. in that the base unit is "produced from plastic in single piece".
- 2.2 The technical effect that can be attributed to this distinguishing feature can be seen in a cheap and less time-consuming manufacture. The objective technical problem to be solved is thus how to provide the laundry dryer with its base unit as shown in P1 in a cheap and efficient way.
- 2.3 The solution to construct it from plastic in a single piece is rendered obvious at least by D4.
  - 2.3.1 Paragraph [0038] of D4 describes that '[t]he lower and upper basement portions 115a and 115b are attached so as to make one integral to the other by means of welding or gluing along their matching edges'. As explained above concerning the interpretation of feature E), a base produced in this way would already fall under this definition. However, paragraph [0038] of D4 also mentions that 'in alternative embodiments of the invention, the basement 105 may be formed directly in a single piece construction.' The Board considers this a clear incentive for the skilled person to not only permanently join several parts but to go one step further and to directly produce a base unit in a single piece.
  - 2.3.2 The appellant's argument that the base shown in P1 could not be formed directly from plastic in a single piece because the structure was complicated and the seats 20 could not withstand the high axial forces

during tumbling if they were not made from metal, is not accepted.

As also argued by respondent 1, the difficulties of producing the base of P1 are the same as for the base in the contested patent. In both cases the design and material thicknesses have to be determined, which does however not pose unsurmountable difficulties for the skilled person and indeed would be considered by a skilled person as merely part of normal structural considerations when designing such parts.

As to the axial forces due to tumbling of the laundry in the drum and the forces arising therefrom, there is no indication that they would be so high that the seats 20 would not withstand them if they were made of plastics. The skilled person would simply choose an appropriate material thickness and a sufficiently stiff type of plastic. The further argument of the appellant that the plastic construction needed stiffening ribs which were not possible to implement due to space constraints is no more than an allegation. Neither is it technically necessary to use stiffening ribs to achieve the necessary stiffness (as there are alternatives available, such as e.g. fibre reinforcement), nor are there any space constraints apparent that would prevent the skilled person from choosing suitable dimensions.

- 2.4 The skilled person would thus take up the explicit teaching in paragraph [0038] of D4 and form the base 7 of P1 in a single piece construction, thereby arriving at a laundry dryer according to claim 1 without the necessity of inventive skills. Therefore, the ground for opposition under Articles 100(a) and 56 EPC prejudices the maintenance of the patent as granted.

3.       *Auxiliary request 1*

- 3.1       Auxiliary request 1 is identical to auxiliary request 1a as filed during the opposition proceedings.

Claim 1 does not fulfil the requirements of Article 56 EPC as its subject-matter does not involve an inventive step over a combination of P1 and D4. The further features appended to the claim are equally known from P1, such that the reasoning given above with respect to the main request applies equally.

- 3.2       The appellant's argument that a 'rail-shaped' member was capable of guiding a 'slide-shaped' member and that this was different from a male component that was only inserted into a female counterpart, is not persuasive as no structural difference can be recognised. When being inserted, the connecting members 17a and 17b slide into the seats 20. These members act as a slide and the walls of seats 20 as a rail. The added features 'rail-shaped' and 'slide-shaped' are thus readable on the connecting members and the seat of the embodiment in P1. They may not have the same design with a slit and a tongue as the embodiment of the patent, but this particular configuration is not defined in claim 1. There is no reason to read further limitations into a claim, which are only shown in the drawings but not defined in the claim.

- 3.3       Auxiliary request 1 is therefore not allowable.

4. *Auxiliary request 3*

*Admittance*

- 4.1 Auxiliary request 3 is a combination of granted claims 1, 2 and 3. This particular request had not been filed during the opposition proceedings.

The Board exercised its discretion to exclude auxiliary request 3 from the proceedings (Article 12(4) RPBA 2007, Article 25(2) RPBA 2020) for the reasons given below.

- 4.2 According to Article 12(4) RPBA 2007, the Board has the power to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings.

- 4.3 The appellant's argument that the amendment had been made as a reaction to the impugned decision and that the request could not have been presented in the proceedings before the opposition division is not accepted. The decision can only form the basis for any such reaction if there is something new in the decision. No reasoning is however apparent from the decision that implies that it related to an argument which was not already put forward in the opposition proceedings.

- 4.4 Other than argued by the appellant, this subject-matter was also not presented in an independent claim in the proceedings before the opposition division. Present auxiliary request 3 includes an independent claim 1 which is a literal combination of granted claims 1, 2 and 3. Auxiliary request 3 as on file before the opposition division included an independent claim 1

that was also based on granted claims 1, 2 and 3, however with certain features reworded. During the oral proceedings before the opposition division, the opposition division found that this rewording did not meet the requirement of Article 123(2) EPC. The logical reaction would thus have been to file the present auxiliary request, i.e. without the rewording, already in the opposition proceedings. Instead, the proprietor (now appellant) chose to withdraw the former auxiliary request 3 and to file a request with a different claim 1, taking back the rewording to the formulations as in the claims as granted, but additionally including a further feature taken from paragraph [0007].

- 4.5 The appellant's argument that it considered it necessary to include further features to establish novelty (as otherwise the opposition division would not have accepted the filing of a new auxiliary request during the oral proceedings), is not borne out by the facts of the case. It is not apparent from the written proceedings nor from the minutes of the oral proceedings that the combination of such hypothetical subject-matter had been discussed, let alone that the opposition division had given a negative opinion on such a combination.

Thus, in the opposition proceedings the appellant deliberately decided not to pursue the subject-matter given by the combination of granted claims 1, 2 and 3. By doing so, it prevented a decision being issued in this regard. Introducing such subject-matter for the first time in the appeal proceedings would be contrary to the purpose of the appeal proceedings to review the appealed decision.

4.6 Present auxiliary request 3, with its independent claim 1 being a literal combination of claims 1, 2 and 3 as granted and thus not including the further feature of paragraph [0007], could and should have been filed in the proceedings before the opposition division. The Board thus exercised its discretion to exclude it under Article 12(4) RPBA 2007.

5. *Auxiliary request 5A*

*Admittance*

5.1 The Board exercised its discretion not to admit auxiliary request 5A into the proceedings (Article 13(1) RPBA 2020) for the reasons given below.

5.2 Auxiliary request 5A includes an independent claim 1 which is a literal combination of claims 1 to 4 as granted. It does not correspond to any request in the proceedings before the opposition division. The only request filed before the opposition division that included features taken from claim 4 as granted, was auxiliary request 4. Claim 1 of this request was however based on a reworded claim 4 and additionally contained a feature relating to overlapping holes that was based on a statement in paragraph [0026] of the description of the contested patent.

Auxiliary request 5A was presented after the appellant had filed its grounds of appeal and thus constitutes an amendment to the appellant's appeal case. Its admittance is thus at the discretion of the Board (Article 13(1) RPBA 2020). As stated there, the Board shall exercise its discretion in view of, inter alia, the current state of the proceedings, the suitability of the amendment to resolve the issues which were

admittedly raised by another party in the appeal proceedings or which were raised by the Board, whether the amendment is detrimental to procedural economy, and, in the case of an amendment to a patent application or patent, whether the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by another party in the appeal proceedings or by the Board and does not give rise to new objections.

Introducing a new request made after a party has presented its complete case does not meet the requirement for procedural economy as set out in Article 13(1) RPBA 2020 unless there is a justification for such a late change. In the present case, the Board does not see any such justification.

- 5.3 The appellant's argument that claim 1 of auxiliary request 5A was similar to the independent claim of auxiliary request 4 as filed in the opposition proceedings and should thus be admitted is not persuasive. First of all this argument does not justify why the request was not filed earlier in the appeal proceedings. Secondly, the independent claims of these requests do not correspond to each other, nor can they be regarded as being particularly similar. As laid out above, claim 1 of auxiliary request 4 as filed during the opposition proceedings contained the features of granted claims 1 and 4 but not the features of granted claims 2 and 3. Instead, it included a feature regarding overlapping holes based on paragraph [0026] of the patent. It thus had a scope that differed from claim 1 of present auxiliary request 5A in several respects.

- 5.4 The appellant's argument that the feature based on paragraph [0026] had been taken out of the claim in response to the written decision of the opposition division with regard to Article 123(2) EPC is not accepted. As is apparent from the minutes of the oral proceedings before the opposition division (see item 42), the respective objection with regard to the feature concerning the overlapping holes in claim 1 was raised by opponent 1 during the oral proceedings. The decision of the opposition division was however based on a lack of compliance with Article 123(2) EPC in respect of claim 2 (see decision, Reasons 6). If there was a reason to take out the feature regarding the overlapping holes again, this was due to the objection of opponent 1, but not due to anything apparent for the first time from the written decision.
- 5.5 As regards the appellant's argument that, by presenting auxiliary request 5A, the requests already on file were made converging, this does not change the findings of the Board. Auxiliary requests 1 to 6 were filed with the proprietor's grounds of appeal. These requests were thus part of the appellant's complete case under Article 12(3) RPBA 2020. The provisions of Article 13(1) RPBA 2020 with its requirement for procedural economy did not apply to the requests already filed with the grounds of appeal. As a consequence, the filing of auxiliary request 5A cannot overcome a deficiency which did not exist.
- 5.6 There is thus no justification for filing auxiliary request 5A at such a late stage of the appeal proceedings. The Board thus exercised its discretion under Article 13(1) RPBA 2020 (Article 25(1) RPBA 2020) not to admit auxiliary request 5A into the proceedings.



6. *Auxiliary request 6A*

*Admittance*

- 6.1 The Board exercised its discretion not to admit auxiliary request 6A into the proceedings (Article 13(1) RPBA 2020) for the reasons given below.
- 6.2 Auxiliary request 6A was presented after the appellant had filed its grounds of appeal and thus constitutes an amendment to the appellant's appeal case. Its admittance is thus at the discretion of the Board (Article 13(1) RPBA 2020).
- 6.3 Claim 1 of auxiliary request 6A is a literal combination of all granted claims 1 to 5. Auxiliary request 6A does not correspond to any request in the proceedings before the opposition division.
- 6.4 As to the appellant's argument that the subject-matter of auxiliary request 6A was filed essentially as auxiliary request 5 in the opposition proceedings, this is not accepted. Claim 1 of that request was a combination of claims 1 and 5 as granted, but with the features of claim 5 having been reworded. Furthermore, none of the requests filed in the proceedings before the opposition division included an independent claim directed to the combination of all claims, i.e. not only combining claims 1 and 5 but also including the features of claims 2, 3 and 4.
- 6.5 As regards the appellant's argument that auxiliary request 6A is also a combination of auxiliary requests filed earlier, this is not persuasive. With the further features of granted claims 2, 3, 4 and 5 only having been made the subject of separate requests, there was

no need for the opposition division to take a decision on the subject-matter of a claim 1 including the features of all dependent claims.

6.6 Should the requests be admitted, this would necessitate a discussion, for the first time in the appeal proceedings, of a combination of subject-matter not having been the subject of the proceedings before and would thus go against the need for procedural economy.

6.7 Since no justification for filing auxiliary request 6A at such a late stage of the appeal proceedings is apparent, the Board exercised its discretion under Article 13(1) RPBA 2020 (Article 25(1) RPBA 2020) not to admit auxiliary request 6A into the proceedings.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated