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**Datasheet for the decision  
of 8 July 2019**

**Case Number:** T 1911/16 - 3.2.04

**Application Number:** 10002618.6

**Publication Number:** 2364636

**IPC:** A47L15/50

**Language of the proceedings:** EN

**Title of invention:**

Cutlery tray, dishwasher basket and dishwasher

**Patent Proprietor:**

Electrolux Home Products Corporation N.V.

**Opponent:**

Arçelik Anonim Sirketi

**Headword:**

**Relevant legal provisions:**

EPC Art. 54(2), 56

**Keyword:**

Novelty - (yes)  
Inventive step - (yes)

**Decisions cited:**

**Catchword:**



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Case Number: T 1911/16 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 8 July 2019**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
20 June 2016 concerning maintenance of the  
European Patent No. 2364636 in amended form.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** G. Martin Gonzalez  
C. Heath

## Summary of Facts and Submissions

I. The appellant-opponent lodged an appeal, received on 15 August 2016, against the interlocutory decision of the Opposition Division posted on 20 June 2016 concerning maintenance of the European Patent No. 2364636 in amended form, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 20 October 2016.

II. Opposition was filed under Article 100(a) EPC based on lack of novelty and of inventive step.

The Opposition Division held that the patent as amended met the requirements of the Convention, having regard inter alia to the following evidence:

- (E1) DE 703 2937 U
- (E6) DE 700 8981 U
- (E7) GB 2 042 147 A
- (E8) US 5,462,348 A

III. The appellant-opponent requests that the decision under appeal be set aside and that the patent be revoked.

The respondent-proprietor requests that the appeal be dismissed, in the alternative that the decision under appeal be set aside and that the patent be upheld based on one of Auxiliary Requests 1-5 all filed with letter dated 27 February 2017.

IV. Oral proceedings were duly held before the Board on 8 July 2019.

V. The independent claim according to the main request reads as follows:

"Cutlery tray (1) adapted to be attached to a dishwasher basket (2) and designed to receive dishes thereon, the bottom (3) of which being divided into two support faces (7) each of which declining laterally from their joining portion (8) to a respective margin (5) of the cutlery tray (1), the joining portion (8) being a broadened bar."

VI. The appellant-opponent argued as follows:

The maintained claim 1 (main request) is not new over the disclosure E1. Its subject-matter also lacks an inventive step in the light of E1, E6, E7, E8 and the common general knowledge of the skilled person.

VII. The respondent-proprietor argued as follows:

Document E1 neither describes a cutlery tray nor a tray with a joining portion in the form of a joining bar. The subject-matter of claim 1 of the main request is therefore new. It also involves an inventive step over the alleged combinations of prior art teachings, namely starting from E1 or E8 as closest prior art in combination with common general knowledge, E1, E6-E8.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The invention is directed to a cutlery tray adapted to be attached to a dishwasher basket of a dishwasher, see specification paragraph [0001]. With the aim of providing more flexibility, the claimed cutlery tray is also adapted to receive cups as well as cutlery. With this objective, the bottom of the cutlery tray is

divided into two support faces. Each support face declines laterally from their joining portion to a respective margin of the cutlery tray, see specification paragraphs [0007]-[0010]. For enhanced mechanical stability and rigidity, the joining portion is in the form of a broadened bar, see paragraph [0018].

3. Novelty - Main request

3.1 E1, see figure 1, top right hand corner, and figures 4 and 5, and page 4, 3rd and 4th paragraph, discloses a wire tray or basket 16 made of individual ribs (unnumbered) set in a rectangular frame defining lengthwise sides 17 end sides 18 and a bottom 19. The ribs are roughly W shaped, with the apex of the central  $\Lambda$  shaped portion bent downwards. The respective legs of the central  $\Lambda$  shaped portion of the ribs together define planes that are inclined downwards from the apex area. This tray is described only for use with coffee cups; however, in the Board's view, it is equally suitable for for example outsized cutlery placed lengthwise in the tray.

3.2 The appellant-opponent contests the conclusion of the Opposition Division that the subject-matter of claim 1 is new because E1 does not disclose a joining portion being a broadened bar, see impugned decision section II.6.4. In its view the central structure of the tray in the area of the apex forms a broadened bar in the broadest sense of that term.

3.3 The Board disagrees. According to well established principles of claim interpretation, the skilled person reads the claims with normal reading skills, giving terms their usual meaning, in context and in the light

of the description and drawings in order to arrive at a technically sensible reading of the claim that takes into account the whole disclosure. Thus, they would understand the claimed term "bar", in its usual sense as a "straight piece of .... rigid material, long in proportion to its thickness" (OED), which is broadened, meaning it will have a breadth greater than its thickness. The term thus requires a single elongated element forming the joining portion between the two support surfaces. The elongate element 8 joining the two surfaces 7 in figures 1 and 2 of the patent is a (non-limiting) example of what is meant by a "broadened bar". In the Board's view the skilled person would not consider the apex portion of the ribs between and connected to two adjacent longitudinal wires running the length of the basket or tray as a "bar" as they normally understand that term. They might identify the apex portions of the ribs and the two wires as defining a rectangular central portion of the wire basket giving it structural integrity, they would still not call it a "bar" in the normal sense of that term as this implies solidity of the object in the space occupied by it. Therefore, E1 does not directly and unambiguously disclose the feature of a "broadened bar".

3.4 The Board thus concludes that E1 does not anticipate the subject-matter of claim 1 in the sense of Article 54(2) EPC.

4. Inventive step - Main request

The appellant-opponent also contests the findings of the Opposition Division that the subject-matter of claim 1 involves an inventive step, see section II.7.1. of the contested decision. They object lack of inventive step starting from E1 and from E8.

4.1 Considering E1 as a starting point for the assessment of inventive step, the subject-matter of claim 1 differs from the tray known from E1 in that the joining portion of the bottom is a broadened bar.

The claimed broadened bar provides an alternative to the central structure in the basket of E1 discussed above for providing mechanical stability and rigidity of the cutlery tray, see patent specification, cf. paragraph [0018].

4.1.1 The appellant-opponent disputes the conclusions of the Division that this modification of the tray of E16 involves an inventive step. According to the impugned decision, the skilled person would not find hints in E1 for changing the structure shown in figures 5 of E1.

The appellant-opponent argues that, on the contrary, the skilled person would be motivated by E1 itself to redesign the wire mesh tray E16 for its production in plastic. Alternatively, the skilled person would consider E8 that in claim 12 suggests to the skilled person that a tray 30 shown as a wire mesh can also be molded of plastic. Either way, structural considerations deriving from the different properties and constraints imposed by the use of plastic, which are known to the person skilled in the field of dishwasher design, would lead them as a matter of obviousness to modify the base structure of the tray 16 in E1 by providing a central broadened joining bar.

4.1.2 The Board is however not convinced by this argument.

Firstly, it is questionable whether E1 indeed suggests that the tray 16 could also be made of plastic. The



relevant passage on page 2, 1st paragraph , final two lines ("das Ganze besteht aus Plastik- oder Metallmaterial mit evt. Plastikverkleidung") can also be read as meaning that some parts are made of plastic (e.g. the cutlery baskets 10) while others (the main basket 1) are made of plastic coated metal, as indeed appears to be shown in figure 1. Page 3, 2nd paragraph certainly does suggest that the main basket can be made of either plastic or coated metal. However, as far as the tray 16 is concerned, only a metal framework ("Metallrahmen") is mentioned. The Board concludes that there is no clear and unambiguous suggestion in E1 to realize tray 16 in plastic.

Moreover, even if there was such a hint, the Board is not convinced that realizing the tray in plastic would result in a "broadened bar" as required by claim 1. Assuming, for the sake of argument that the skilled person would be motivated to redesign the structure of E1 for its manufacture in plastic, they would however keep in mind its original structure and purpose, and thus retain its general shape and geometry, and original properties and functionality.

E1, page 4, fourth paragraph, describes that tray 16 is for supporting ten coffee cups in two rows. The wire structure of the tray 16 is designed accordingly. It thus has an appropriate number and spacing of specially shaped ribs which are fixed to wire support elements extending the length and breadth of the tray. These give it its shape so that the tray has the required strength and rigidity to support the ten coffee cups, but also to expose the surfaces of the cups to jets of cleaning liquid and to allow them to drip dry. The plastic version of the tray would need to have the same

shape, as well as the same properties and functionality.

It is true, as the appellant-opponent puts forward, that a structural redesign in plastic would possibly result in the main planes that make up the tray shape being replaced by flat grid like elements such as those forming the cutlery basket 10 (figure 1 of E1), though with a wider mesh. That this means, as argued by the appellant-opponent, that they would then dispense with the central portion at the apex of the ribs between the two longitudinal wires to directly join inclined planes at a reinforced bar like element, is far from certain. E1 is silent on the function of this central portion, but it appears to have been purposely chosen to have this sunken V shape. This means that the skilled person would also strive to recreate this feature if they were to realize the tray in plastic. However, replication of this feature precludes the two main supporting planes meeting at a joining portion in the form of a "broadened bar".

In conclusion, the skilled person would not arrive at the subject-matter of claim 1 as upheld in an obvious manner on the basis of E1 alone.

- 4.2 The appellant-opponent also challenges inventive step starting from E8. It is undisputed that E8 describes a flat bottomed wire cutlery tray 30 for a dishwasher basket and that the claimed tray differs from the known structure in that the bottom is divided into two laterally inclined support faces with a joining portion in the form of a broadened bar.
- 4.2.1 These features allow a more versatile use of the tray, not only for cutlery, but also for dishes or cups, such

that when placed on the tray they are oriented toward the center of the dishwasher chamber and so enhance cleaning efficiency, see specification paragraph [0012]. The objective technical problem can thus be formulated accordingly as providing a more versatile cutlery tray that can optimize the use of the space within the basket, see specification paragraphs [0007]-[0010].

This raises the question whether the skilled person, tasked with modifying the known cutlery tray of E8 to make it more versatile would be prompted by the other cited prior art to modify its bottom wall to provide two inclined surfaces joined at the center with a broadened bar.

- 4.2.2 In this respect, the appellant-opponent cites the teachings of E7, column 1, lines 41, 42, and E6, page 6 second paragraph of E6. It is certainly true that these documents disclose the use of inclined surfaces in draining boards or racks, which can be used to dry a variety of different objects. However, they do so in a different context and neither document specifically associates the use of inclined surfaces per se with accommodating cutlery and other objects. The draining rack of E6 can be placed upright as shown in figures 4 and 5 for cups that rest on the strips 2 (page 6, 1st complete paragraph); or it can be placed upside down and plates positioned in slots 12 (page 6, final paragraph). The foldable draining rack of E7 on the other hand allows placement of plates between bars 9, cups on supports 10 (fig.1b), or wine glasses in slots 11(fig.1a). Consequently, starting from the cutlery basket of E8 the skilled person does not find in either document any suggestion that they can use the inclined surfaces for cutlery as well as other objects. That

they might infer from these specific arrangements some general teaching regarding the multi-purpose nature of inclined surfaces per se in the Board's view goes well beyond the skilled persons limited skills of abstraction. Absent such teaching, the Board does also not consider it trivial per se to modify the flat bottom of tray 30 of E8 as in the contested claim. The tray 30 of E8 in its flat form very conveniently already serves to accommodate several cutlery utensils for washing, see E8, column 1, lines 38, 39.

- 4.3 In the light of the above, the Board confirms the finding of the Opposition Division that the subject-matter of claim 1 according to the main request involves an inventive step in the sense of Article 56 EPC.
  
5. As the appellant's arguments against the findings of the decision of the Opposition Division fail to convince the Board, it can but confirm the decision of the Opposition Division.

**Order**

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

**The appeal is dismissed.**

The Registrar:

The Chairman:



M. H. A. Patin

A. de Vries

Decision electronically authenticated