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**Datasheet for the decision
of 14 September 2020**

Case Number: T 0649/17 - 3.2.06

Application Number: 09756708.5

Publication Number: 2362922

IPC: D06F37/26

Language of the proceedings: EN

Title of invention:

A HORIZONTAL AXIS WASHING MACHINE WITH RECESS IN THE TUB TO
ACCOMODATE DRUM SEAM

Patent Proprietor:

Arçelik Anonim Sirketi

Opponent:

Electrolux Appliances Aktiebolag

Headword:

Relevant legal provisions:

EPC Art. 56, 84, 123(2)

RPBA 2020 Art. 13(1)

Keyword:

Inventive step - main request (no) - auxiliary requests 1, 2 and 4 (no)
Claims - clarity - auxiliary request 3 (no)
Amendments - added subject-matter - auxiliary request 3 (yes)
Late-filed auxiliary requests - auxiliary request 11 - admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 0649/17 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 14 September 2020

Appellant: Electrolux Appliances Aktiebolag
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 16 January 2017
rejecting the opposition filed against European
patent No. 2362922 pursuant to Article 101(2)
EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European Patent No. 2 362 922. It requested that the decision under appeal be set aside and the patent be revoked.
- II. In reply, the respondent (proprietor) requested, as a main request, that the appeal be dismissed. It also filed nine auxiliary requests, to which the appellant also responded.
- III. The following documents, referred to by the appellant in its grounds of appeal, are relevant to the present decision:
 - E1b Kipris translation of E1(KR 10-2008-0018747)
 - E2 WO 2007/023453 A1
 - E3 DE 1 936 017 U
 - E4 US 2005/0252254 A1
 - D9 definition of housing from the Merriam-Webster dictionary
- IV. With letter dated 15 May 2020, the respondent filed auxiliary request 10.
- V. The Board issued a summons to oral proceedings and a communication containing its provisional opinion, which stated *inter alia* that the terms used in the claims were not limited by the description in the patent and that the subject-matter of claim 1 of the main request appeared to lack an inventive step.
- VI. With letter dated 14 August 2020, the respondent filed auxiliary requests 11 to 13.

VII. Oral proceedings were held before the Board on 14 September 2020, during which the respondent withdrew auxiliary requests 5-10, 12 and 13.

The final requests were as follows:

The appellant (opponent) requested that the decision under appeal be set aside and the European patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed (main request), or as an auxiliary measure that the patent be maintained in amended form according to one of the following requests in the given order:
- auxiliary requests 1-4, as filed with the reply to the appeal,
or auxiliary request 11, as filed with letter dated 14 August 2020.

VIII. Claim 1 of the main request reads as follows (with the feature-by-feature analysis as used by the parties):

F1 A horizontal axis washing machine (1) that comprises
F2 a cylindrical tub (2) having a front (60), a rear (6) and a side wall and
F3 a drum (3) assembled into the said tub (2) having
F3.1 - a cylindrical body (7),
F3.2 - two circular lids (8, 80) mounted to the body (7) such that the front and rear surfaces are formed and
F3.3 - a seam (4)

F3.3.1 formed along a circular line by bending the side by side edges of the body (7) and the lids (8, 80),

F3.3.2 in the form of a protrusion extending towards the tub (2) on the exterior surface of the body (7) and outside the volume formed by the lids (8, 80) and the body (7). (*sic*)

and characterized by

F4 a housing (5)

F4.1 in the form of a recess disposed on the front and/or the rear wall (6, 60),

F4.2 that extends at the level of the seam (4), along the line at which the walls (6, 60) and the side wall join.

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the "or"-option in the "and/or" definition in feature F4.1 has been deleted and the full stop at the end of feature F3.3.2 has been replaced with a comma.

Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the following feature has been added at the end of the claim:

"wherein the housing (5) is disposed on the tub (2) rear wall (6), at the level of the seam (4) and at the point at which the drum (3) is farthest away from the tub (2) rear wall (6)".

Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 3

differs from claim 1 of the main request in that the following feature has been added at the end of the claim:

"wherein the recess is shaped as a notch".

Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 4 differs from claim 1 of the main request in that the following feature has been added at the end of the claim:

"wherein the housing (5) is disposed at the position whereto the seam (4) can reach on the tub (2) at the excessive displacements of the drum (3) in the horizontal plane".

Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 11 differs from claim 1 of the main request in that the "or"-option in the "and/or" definition in feature F4.1 has been deleted and in that the following feature has been added at the end of the claim:

"wherein the housing (5) is formed on the tub walls (6, 60), coinciding with the seam (4) along the line on the rear wall (6) of the tub (2), wherein the housing (5) forms a recess on the surface of the tub walls (6, 60) facing the drum, and wherein the housing (5) extends along a circular line on the front and rear wall (6, 60)."

IX. The arguments of the appellant as far as relevant for the decision may be summarised as follows:

Claim interpretation

The expression "a seam formed along a circular line by bending the side by side edges of the body and the lids" implied a single circular seam formed between the body and both lids, even though these were at different ends of the body.

The expression "a housing in the form of a recess disposed on the front and the rear wall" implied the same housing being formed on both walls.

Absent any definition in the patent, the expression "volume formed by the lids and the body" referred to the volume formed by the internal surfaces of the drum.

The description of the patent did not contain a specific definition for the term "housing" such that any recess from a base level could be seen as such a housing.

The extension "at the level of the seam" did not require any level of precision, nor did the extension "along a line at which the walls and the side wall join" imply any size restriction. It should just be interpreted as a "region" in its broadest sense.

Main request - Article 56 EPC

The subject-matter of claim 1 of the main request was not inventive when starting from E1b when taking into consideration the teaching of E2.

E1b disclosed all the features of claim 1, including the features F3.3.1, F3.3.2, F4, F4.1 and F4.2.

The ends of the cylindrical body 311 disclosed in Figure 6 on page 10 of E1b (the Board notes here that the numbering of each of Figures 2-7 is located at the bottom of the preceding page; for example, Figure 6 is depicted on the same page as the numbering "Fig.7") each had a straight cross-section and each was inserted into the bent portions 322 and 332 of the respective lids. The mutual insertion of two parts necessarily resulted in the bending of the inserted part. Feature F3.3.1 was thus disclosed in E1b.

The volume formed by the lids and the body was the inner volume of the drum such that feature F3.3.2 was disclosed in Figure 6 of E1b.

The housing defined in claim 1 was no more specific than the circular recess "second end 255" that also accommodated the seam 332, such that this extended at the level of the seam. Features F4, F4.1 and F4.2 were therefore disclosed in E1b.

Assuming that the subject-matter of claim 1 differed from E1b by feature F3.3.1, the objective problem to be solved starting from E1b was simply to provide an alternative seam.

E2, Figure 3, disclosed the alternative of bending the seam formed between the body and the lid. The skilled person would recognize that only the shape of the seam needed to be changed to provide an alternative and had no reason to alter the other characteristics of the seam known from E1b.

Auxiliary request 1 - inventive step

A recess as defined in the claim was so broad that any space retracted from another surface could be considered as one. Elb, Figures 3 and 4 (see pages 7 and 8) disclosed this feature. Since the added feature was already known from the closest prior art Elb, the subject-matter of claim 1 did not involve an inventive step for the same reasons as applied to claim 1 of the main request.

Auxiliary request 2 - inventive step

Figures 3 and 5 (on pages 7 and 9) of Elb disclosed a bent portion 332 in the region of the lid farthest away from the tub rear wall, where the "second end 255" could be considered as a point in the context of claim 1. The housing was a space that could not occupy a singularity such as a point. Since the added features were also known from Elb, the subject-matter of claim 1 did not involve an inventive step for the same reasons as applied to claim 1 of the main request.

Auxiliary request 3 - Articles 84 and 123(2) EPC

The term "notch" added to further define the recess was not clear as it did not define any specific size or shape. Also, the term was not used in the application as filed and the skilled person could not derive it directly and unambiguously from Figure 3.

Auxiliary request 4 - inventive step

The seam (a solid) reaching the tub necessarily defined a surface (or area). The position defined in claim 1 thus necessarily also referred to an area as was disclosed in Elb. Thus, the subject-matter of claim 1

did not involve an inventive step for the same reasons as applied to claim 1 of the main request.

Admittance of auxiliary requests 1-4 and 11

Auxiliary requests 1-4 and 11 should not be admitted into the proceedings.

As regards auxiliary request 11, the respondent did not provide any reasons for submitting these amendments at this stage of the appeal proceedings. The objections were already put forward by the appellant with its grounds of appeal. The respondent also failed to demonstrate why these amendments, *prima facie*, overcame the issues raised by the appellant in the appeal proceedings nor why they gave rise to no new objections.

- X. The arguments of the respondent as far as relevant for the decision may be summarised as follows:

Claim interpretation

The skilled person reading claim 1 of the main request would understand that the expression "a seam formed along a circular line by bending the side by side edges of the body and the lids" referred to different seams being formed between each lid and the body.

The expression "a housing in the form of a recess disposed on the front and the rear wall" implied a separate housing being formed on each wall.

The "volume formed by the lids and the body" also included the space occupied by the seam itself.

A "housing" was a space taken out of a structural member to admit the insertion of part of another, as explained in D9. The housing must be sized to admit the insertion of a seam without the seam impacting with the walls, as described in paragraph [0024] of the description of the patent.

The skilled person understood the word "level" as the radial position such that the radial position of the housing corresponded to the radial position of the seam, i.e. the circular line of the seam.

Main request - Article 56 EPC

The subject-matter of claim 1 involved an inventive step, when starting from E1b as the closest prior art and taking into consideration the teaching of E2.

E1b did not disclose the features F3.3.1, F3.3.2, F4, F4.1 and F4.2.

Figure 6 of E1b did not show that the seam extended along the whole circular line as required by feature F3.3.1, particularly in the locations where the drum was mounted on the supporting member 351. The mutual insertion of two parts did not necessarily result in the bending of the inserted part, possibly only in compression/clamping to achieve a tight fit.

As regards feature F3.3.2, the seam was not disposed outside the volume formed by the lids and the body, since, as could be seen in Figure 6 of E1b, the seam did not protrude sideways/axially beyond the supporting members, which were part of the lid and thus of the volume defined in claim 1.

As regards features F4 and F4.1, E1b did not disclose a housing as defined in D9. The second end 255 was not a recess but a protrusion as described in E1b, page 3, 8th complete paragraph.

E1b showed a broad/wide annularly recessed tub part "second end 255" which could not be considered to extend along a circular line (as required in feature F4.2), since the second end 255 was too wide to be considered as a line. In addition, the recessed part 255 in E1b was not located at the region where the wall and the side walls joined but was radially to the inside of that union, exclusively in the lid.

Assuming that the subject-matter of claim 1 only differed from E1b by feature F3.3.1, the seam of the invention allowed for a bigger drum; this was the problem to be solved.

There was no link between E1b and E2, the latter disclosing a different tub with no housing as required by claim 1. Further, the teaching of E2 was to direct the seam towards the central axis instead of bending it to the outside, so as to increase the space between the drum and the tub. The skilled person would thus not replace the seam from E1b with one from E2 since the latter was not on the exterior surface of the body as defined in claim 1 and could not be connected to the supporting members of E1b.

The seam of E2 was also bigger than the one of E1b and thus its adaptation to E1b would require either making the drum of E1b smaller or the tub of E1b bigger.

Auxiliary request 1 - inventive step

Elb, Figures 3 and 4, did not disclose a recess disposed on the front wall and a further recess disposed on the rear wall of the tub. The skilled person looking at Figure 7 only recognized a protrusion narrowing the opening of the tub. In addition, the presence of the presence of recesses could not be assessed from two different viewing angles.

Auxiliary request 2 - inventive step

The housing in Elb was not disposed at the level of the seam and further that it was not at the point at which the drum was farthest away from the tub rear wall, since the second end 255 was a region and thus not a point.

Auxiliary request 3 - Articles 84 and 123(2) EPC

For the skilled person it would be clear that a notch was a v-type indentation having a limited width. The skilled person looking at Figure 3 of the application as filed derived directly and unambiguously that the narrow recess shown there was a notch.

Auxiliary request 4 - inventive step

The "second end 255" of Elb was a wide recessed area that covered around one third of the surface of the outer wall and thus could not be considered a "position".

Admittance of auxiliary requests 1-4 and 11

As regards auxiliary request 11, the opponent had filed an enormous amount of objections from which only some had preliminarily convinced the Board. To await the

Board's preliminary opinion and react to that was the sensible approach and only to take up the objections the Board considered relevant.

The interpretation of the feature "housing" adopted by the Board was diametrically opposed to that of the opposition division although the arguments from the appellant had not changed. These triggered the need for further auxiliary requests.

Reasons for the Decision

1. Claim interpretation
 - 1.1 As also stated by the Board in its preliminary opinion, a claim should be interpreted in a technically sensible manner and be given the broadest, technically logical interpretation and should be construed by a mind willing to understand, not a mind desirous of misunderstanding. Thus, the skilled person should only rule out interpretations which are illogical or which do not make technical sense (see also Case Law of the Boards of Appeal 9th edition, II.A.6.1, Interpretation of claims).
 - 1.2 Regarding the full stop at the end of the preamble, the Board finds that this would be immediately recognized as an obvious error and that the only valid full stop would be understood to be at the end of the characterizing portion.
 - 1.3 With regard to the terminology in claim 1,

"a seam formed along a circular line by bending the side by side edges of the body and the lids"

and

"a housing in the form of a recess disposed on the front and the rear wall",

the Board finds that the skilled person reading claim 1 of the main request would understand that the expression "a seam formed along a circular line by bending the side by side edges of the body and the lids" cannot logically refer to a single seam formed between the body and both lids (as argued by the appellant) but rather to a seam at either end formed between each lid and the body respectively.

Similarly, the skilled person would understand that the expression "a housing in the form of a recess disposed on the front and the rear wall" implies a separate housing formed on each wall (albeit this is grammatically awkward) not least since one and the same recess cannot reasonably be disposed on the front and on the back wall of the tub at the same time.

1.4 With regard to the terminology

"volume formed by the lids and the body",

the skilled person reading the claim would also reasonably interpret the expression "outside the volume formed by the lids and the body" as referring to something external to the volume formed by the internal surfaces of the drum, not least as that is where an identifiable volume is formed. The respondent was unable to identify any specific definition of "volume" in the patent that would mean the claim should be interpreted differently.

1.5 *With regard to the expression*

"a housing",

as explained above, the Board finds that a claim should be interpreted in a technically sensible manner and be given the broadest, technically logical interpretation. Without a specific definition of the term "housing" in the patent, a reference to the description to limit the term is inappropriate. A skilled person knows the term "housing" from their common general knowledge and knows that it is very unspecific. The broadest technically sensible interpretation does not restrict the housing defined in the claim to any specific size. On the contrary, this term encompasses any recess regardless of how big it is (within the obvious limits of the machine in question of course), unless more limited dimensions are defined. A "space taken out of a structural member", as mentioned for example in D9, is thus only one of many possible interpretations that a skilled person would contemplate for a recess (i.e. the form of the housing defined in F4.1).

1.6 Contrary to the argument of the respondent, the particular restrictions to the housing described in paragraphs [0023], [0024] and [0025] of the patent, that find no correspondence in the features of claim 1, do not restrict the feature "housing" beyond what is defined in the claim.

1.7 *With regard to the expression*

"a recess... that extends at the level of the seam (4) along the line at which the walls (6,60) and the side wall join",

without any specific definition in the patent as to what "extend at the level" should mean, the skilled person would seemingly not consider that the extension "at the level of the seam" requires any specific level of precision nor that the extension "along a line at which the walls and the side wall join" implies any size restriction. It is also evident to a skilled person that a housing in the form of a recess cannot be without height (here seen radially), such that the "level of the seam" does not imply the limitations which the respondent argued were seemingly derivable from certain paragraphs of the description referring to drawings of specific embodiments.

Further, and contrary to the respondent's argument, merely because something "extends along a line" does not in itself define that something must extend all the way along the entire length of the line and it is different from what the respondent gave as an example in support of its argument, when it stated that something extending from somewhere to somewhere else ("erstreckt sich entlang einer Linie von... bis") implied extending along the whole length, as in that example - contrary to the wording of the claim - besides the extension, the start and the end point are also defined.

2. Main request - Article 56 EPC

2.1 The appellant argued that the subject-matter of claim 1 of the main request was at least not inventive when starting from E1b as the closest prior art and taking into consideration the teaching of E2.

- 2.2 From all the features of E1b, the respondent only argued that E1b did not disclose the features F3.3.1, F3.3.2, F4, F4.1 and F4.2.
- 2.3 As regards feature F3.3.1, the claim defines the bending of the edges of a cylindrical body such that the bending defined in feature F3.3.1 is necessarily a further bending applied to the edges of an already cylindrical body which are already side by side with the edges of the lid. The ends of the cylindrical body 311 disclosed in Figure 7 of E1b have a straight cross-section and are inserted into the bent portions 322 and 332 of the lid. The mutual insertion of two parts, contrary to the argument of the appellant, does not necessarily result in bending of the inserted part, possibly only later in compression/clamping to achieve a tight fit. It is thus not implicit that the side edges of the body are bent, as other possibilities exist. Thus E1b does not disclose the feature F3.3.1.
- 2.4 Contrary to the argument of the respondent, it is however at least implicit from Figure 7 on page 11 of E1b that the seam extends along the whole circular line even in the locations where the drum is mounted on the supporting member 351. It can be seen in Figure 7 and derived from the paragraph bridging pages 3 and 4 of E1b that the blocking side member 331 is formed with bent portions 332 which are curved so that the end of the cylindrical body 311 is "inserted and united respectively". The skilled person reading the description of E1b and looking at the respective Figure 7 understands that the bent portions are formed around the whole circumference otherwise the cylindrical body could not be "inserted and united" with them.

2.5 As regards feature F3.3.2, the respondent argued that the seam was not disposed outside the volume formed by the lids and the body since, as could be seen in Figure 6 on page 10 of E1b, the seam did not protrude sideways/axially beyond the supporting members, which were also part of the lid and thus of the volume defined in claim 1.

2.5.1 The Board is not persuaded by this argument. As pointed out above under point 1.4, there is no specific definition of "volume" in the patent. The volume formed by the lids and the body can thus, technically reasonably, be seen to be the inner volume of the drum such that, as long as the seam is not formed towards the inside of the drum, all the seams are outside the volume formed by lids and body irrespective whether they protrude axially or radially further than the surface of the body or of the lids.

2.5.2 As can be seen in Figure 6 of E1b, the seams formed by the lids and the cylinder protrude axially on the outside surface of the drum, thus outside the volume formed by the lids as defined in claim 1. In addition, the skilled person would not consider the supporting members 351 of E1b, which are mounted on the outside surface of the rear lid to be part of the lid or of an inner volume defined between the lids and the drum.

The Board also notes, as argued by the appellant, that in the embodiment of Figure 3 of the patent, the seams on the drum on the side of the opening do axially protrude beyond the plane of the lid 80, such that any other more limited interpretation of the meaning of the term "volume", as argued by the respondent, would also not seem to be supported by the patent itself. E1b thus discloses feature F3.3.2.

2.6 As regards features F4 and F4.1, the respondent argued that E1b did not disclose "a housing" as defined in D9. The second end 255 was not a recess but a protrusion as described in E1b, page 3, 8th full paragraph.

As discussed above in points 1.5 and 1.6, claim 1 merely defines a housing in the form of a recess and this housing is not limited to any of the restrictions in paragraphs [0023] to [0025] or of D9 such that any recess could be seen as the housing defined in the claim. This applies to the circular recess "second end 255" in the rear wall of the tub that accommodates the lid in the Figures 2, 3, 5 and 7 on pages 6, 7, 9 and 11 of E1b, which is a recess adapted to admit the insertion of a protruding seam of the drum (n.b. the seam is inside the recess in E1b). The circular recess "second end 255" also accommodates the seam 332 such that it extends thus necessarily at the level of the seam (see point 1.7).

The fact that in E1b the second end 255 is described as a protrusion is just a question of perspective, and not excluded by the wording of claim 1. On page 3, 8th complete paragraph of E1b, the second end 255 is disclosed as protruding "rearwards", i.e. towards the rear of the washing machine. Such a shape necessarily forms a recess on the inside of the tub. Features F4 and F4.1 thus are disclosed in E1b.

2.7 As regards feature F4.2, the respondent argued that E1b showed a broad/wide annularly recessed tub part "second end 255" which could not be considered to "extend along a circular line", since the second end 255 was too wide to be considered a line. In addition, the recessed part 255 in E1b was not located at the region where the wall

and the side walls join but radially to the inside of that union, exclusively in the lid.

- 2.7.1 The Board is also not persuaded by this argument. The housing is a space/volume capable of receiving another smaller volume inside it (i.e. a housing must be able to "house" something). It can thus not be limited to a circular singularity in the form of a line but must be a region with a certain width and depth. As there are no limits defined in the claim for the dimensions of such a housing, the Board sees no reason why the second end 255 in Figure 6 of E1b cannot be considered to extend along a circular line, i.e. following the contour of a circular line without necessarily overlapping/superposing the line or being restricted by the size of it.

In addition, the seam in E1b is inside the housing. Thus, the latter can also be seen to extend "at the level of the seam". As the name also suggests, the second end 255 of the rear tub in E1b is also the end of the rear wall thus necessarily at a region in which the rear wall and the side wall join. Thus, feature F4.2 is disclosed in E1b.

- 2.8 Thus, only feature F3.3.1 is not disclosed in E1b.

- 2.9 The respondent argued that the seam of the invention allowed for a bigger drum (for an equally sized tub) but the Board does not find this to be an effect provided "by bending the side by side edges of the body and the lids".

The feature of claim 1 does not define a specific shape or dimensions for the bent seam that would necessarily reduce the maximum axial or radial length of the drum.

The Board also cannot recognize any reason to find the seam of E1b less stable than the one of the invention, since the stability of the seam depends on various parameters and not only on the shape. In fact, the Board cannot recognize any additional effect in the bending of the side by side edges of the body and the lids of the drum. The objective problem can thus only be seen to be the provision of an alternative seam.

2.10 The skilled person starting from E1b and looking for an alternative seam would take into consideration e.g. the seam of E2 as shown in Figure 3.

2.11 The respondent argued that there was no link between E1b and E2, the latter disclosing a different tub with no housing, such that the skilled person would not look into E2.

The Board finds otherwise. E2 is also directed to a washing machine and whilst it does not disclose a tub having the shape of the tub of E1b, this would not be an obstacle for the skilled person looking for an alternative seam, since the seam is that which connects the lids and the tub body both in E1b and E2. As discussed above, the tub of E1b already discloses a housing comprising the features F4, F4.1 and F4.2 and the skilled person is anyway capable of assessing the sizes and shapes of drums and tubs in order to judge whether a drum used with a different tub can fit into the tub of E1b or not.

2.12 The respondent argued that the teaching of E2 was to direct the seam towards the central axis instead of bending it to the outside to increase the space between the drum and the tub. The skilled person would thus

allegedly not replace the seam of E1b with one from E2 since the latter seams were not on the exterior surface of the body as defined in claim 1 and could not be connected to the supporting members of E1b.

The Board does not find this argument convincing. The seam in Figure 3 of E2 is on the outside surface of the body, bent radially towards the central axis and not towards the tub cylindrical wall. It is also customary practice of the skilled person to adapt the connection of the lid to the supporting members as this is necessary for any lid or seam regardless of its shape. The skilled person would thus apply the seam of E2, Figure 3, to E1b and arrive at the subject-matter of claim 1 in an obvious way when searching for an alternative seam.

2.13 The respondent further argued that the seam of E2 was bigger than the one of E1b and thus its adaptation to E1b would require either making the drum of E1b smaller or the tub of E1b bigger.

The Board however finds that there is no reason to assume this or to find that this would deter the skilled person. Whilst the seams in E2 may have up to 5 layers due to the consecutive bending of the lid and cylindrical wall in comparison to the ones of E1b which have less layers, the skilled person knows that their final overall size is small in comparison to the volumes of a washing machine tub or drum, since the thickness of the lids and drum wall is practically negligible in comparison to the drum and tub size.

Also, although patent drawings are purely schematic, for example, in Figure 2 of E2, from where the magnified details A and B of Figures 3 and 4 originate,

the seams 6 are not even represented due to their diminutive scale. The skilled person would not be deterred to use a seam with more bends than the one shown in Figure 3 of E2. Also, when considering Figure 3 of E2, any concerns about possible size implications are anyway overcome by the orientation of the seams chosen in E2.

- 2.14 For the above reasons, the subject-matter of claim 1 of the main request does not involve an inventive step (Article 56 EPC) when starting from E1b as the closest prior art and, given the technical problem to be solved, when considering the teaching of E2.

The ground of opposition under Article 100(a), 56 EPC thus prejudices the maintenance of the patent as granted and consequently the main request is not allowable.

3. Auxiliary request 1 - inventive step

- 3.1 Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the "or"-option in feature F4.1 has been deleted and now reads

"[a housing] in the form of a recess disposed on the front and~~or~~ the rear wall (6, 60)".

- 3.2 Both parties agreed that the feature could be interpreted such that there is a recess disposed on the front wall and a further recess disposed on the rear wall. The Board also finds no reason to disagree.

- 3.3 Taking into consideration this interpretation, and contrary to the argument of the respondent, the Board finds that Elb, Figures 3 and 7 on pages 7 and 11, discloses a recess disposed on the front wall and a further recess disposed on the rear wall. The depth and the form of the recess are undefined in claim 1 such that, as long as there is a void, shaped and capable of admitting the insertion of another object (i.e. in some sense "housing" it), a recess as defined in claim 1 is present.
- 3.4 The respondent argued that the skilled person could only recognize a protrusion narrowing the opening of the tub but the Board does not accept this. The presence of a protrusion implies the presence of a depression/recess, the difference being only in the perspective of the beholder. As long as this recess is big enough to admit the front seam (as the one in Figure 5 of Elb is), it is considered a recess as defined in claim 1 of the auxiliary request 1.
- 3.5 The respondent further argued that the presence of the recesses cannot be assessed from two different viewing angles but the Board cannot see why this is so. Nothing excludes the assessment from two different perspectives, because as discussed at length during the oral proceedings, claim 1 does not define any specific orientation or perspective for the recess. Elb discloses thus both a recess on the front wall and a further recess on the back wall.
- 3.6 Since this feature is also known from the closest prior art Elb, the subject-matter of claim 1 does not involve an inventive step for the same reasons as apply to claim 1 of the main request. Auxiliary request 1 is thus also not allowable (Article 56 EPC).

4. Auxiliary request 2 - inventive step

4.1 Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the following feature has been added at the end of the claim

"the housing is disposed on the tub (2) rear wall (6), at the level of the seam (4) and at the point at which the drum (3) is farthest away from the tub (2) rear wall (6)".

4.2 The respondent argued that the housing in E1b was not disposed at the level of the seam and further that it was not at the point at which the drum was farthest away from the tub rear wall.

4.2.1 The feature "housing disposed on the tub rear wall at the level of the seam" has already been discussed in the context of feature F4.1 of claim 1 of the main request above (see point 2.6 above). Thus this feature is disclosed in E1b.

4.2.2 As regards the feature "the housing is disposed [...] at the point at which the drum (3) is farthest away from the tub (2) rear wall (6)", both parties agree that the bent portion 332 is in the region of the lid farthest away from the tub rear wall, the "second end 255" (as seen in Figures 3 and 4 of E1b). The respondent however argued that this region was not a point as defined in claim 1 but a section.

The Board disagrees. The housing is a space that cannot occupy a singularity such as a point. In the context of

claim 1, the skilled person understands that a point is necessarily a region (i.e. a number of points together) and, being the housing in the "region" (second end 255), this is the point at which the drum is farthest away from the tub rear wall. E1b thus discloses the feature "the housing is disposed [...] at the point at which the drum (3) is farthest away from the tub (2) rear wall (6)".

4.3 Since this feature is also known from the starting point E1b, the subject-matter of claim 1 does not involve an inventive step for the same reasons as apply to claim 1 of the main request. Auxiliary request 2 is thus also not allowable due to a lack of inventive step (Article 56 EPC).

5. Auxiliary request 3 - Articles 84 and 123(2) EPC

5.1 Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 3 differs from claim 1 of the main request in that the following feature has been added at the end of the claim:

"the recess is shaped as a notch"

5.2 The respondent argued that a notch was the same as a v-shaped type of indentation having a limited width.

The Board however finds that it is unclear for the skilled person what the shape of a "notch" in the context of claim 1 should be, and moreover in what way such a "notch" structurally differs from a recess. The skilled person considers that generally a recess can be seen as a notch but does not associate any specific shape to it, i.e. a notch does not necessarily have a

v-type indentation, such that it is unclear how the term "notch" further specifies the feature "recess" and limits the claim. Thus claim 1 lacks clarity.

5.3 The respondent also argued that the skilled person looking at Figure 3 of the application as filed derived directly and unambiguously that the narrow recess was a notch.

5.4 The Board cannot agree with this argument either. The term "notch" is not used in the text of the application as filed and, as stated in point 5.3, it is not even clear for the skilled person in what way a notch is a particular type of recess nor how a notch is necessarily shaped at all. The skilled person looking at Figure 3 of the application and taking into consideration the application as whole would thus not directly and unambiguously derive that the housing 5 formed as a recess is shaped as a "notch". This feature is thus not unambiguously derivable from Figure 3 either.

5.5 Claim 1 of auxiliary request 3 therefore does not fulfil the clarity requirement of Article 84 EPC and its subject-matter contravenes Article 123(2) EPC. Auxiliary request 3 is thus not allowable.

6. Auxiliary request 4 - inventive step

6.1 Besides the full stop that has been replaced by a comma in feature F3.3.2, claim 1 of auxiliary request 4 differs from claim 1 of the main request in that the following feature has been added at the end of the claim:

"the housing is disposed at the position whereto the seam (4) can reach on the tub (2) at the excessive displacements of the drum in the horizontal plane".

- 6.2 The respondent argued that the "second end 255" of E1b was a wide recessed area that covered around one third of the surface of the outer wall and thus could not be considered a "position".

The Board does not find this argument convincing. It is evident for the skilled person that in the context of the subject-matter of the claim, the position defined in claim 1 must also be seen as an area, since the part of the seam (a solid) reaching the tub necessarily defines a surface (or area). The position defined in claim 1 thus necessarily also corresponds to an area as in E1b. The second end 255 in E1b (see e.g. Figure 5 and 7) is thus also disposed at the position whereto the bent portion 332 can reach on the tub 200 at the excessive displacements of the drum in the horizontal plane. These features are thus also known from E1b.

- 6.3 Since these features are also known from the closest prior art E1b, the subject-matter of claim 1 does not involve an inventive step for the same reasons as apply to claim 1 of the main request. Auxiliary request 4 is thus also not allowable (Article 56 EPC).

7. Admittance of auxiliary requests 1-4 and 11

- 7.1 Since none of the auxiliary requests 1-4 was found allowable, the issue of admittance of these requests does not need to be considered here and can be dispensed with.

- 7.2 However, the appellant also requested not to admit auxiliary request 11 into the proceedings. Auxiliary request 11 was filed with letter dated 14 August 2020, hence after the time limit for filing the reply to the appeal. It therefore constitutes an amendment to the respondent's case (Article 13(1) RPBA 2020, Article 25(1) RPBA).
- 7.3 Article 13(1) RPBA 2020 stipulates that any amendment to the case may be admitted only at the Board's discretion. This discretion shall be exercised "in view of, *inter alia*, the current state of the proceedings, the suitability of the amendment to resolve the issues which were admissibly raised by another party in the appeal proceedings or which were raised by the Board, ..., and, ..., 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". The party shall also "provide reasons for submitting the amendment at this stage of the appeal proceedings".
- 7.4 Regarding this last requirement of Article 13(1) RPBA 2020, it is noted that the appellant did not provide any reason in its written submissions why auxiliary request 11 was submitted only at this stage of the appeal proceedings. The Board finds that since all the objections and arguments regarding the main request were already put forward by the appellant with its grounds of appeal, the current state of the proceedings was such that a reaction after the preliminary opinion of the Board, one month before the oral proceedings does not of itself warrant such late filing.

Contrary to the requirement of Article 13(1) RPBA 2020, the respondent also failed to demonstrate why the amendments, *prima facie*, overcame the issues raised by the other party in the appeal proceedings and did not give rise to new objections. In its submission from 14 August 2020, the respondent simply presented specific arguments relating to Article 123(2) EPC and failed to specify e.g. why these amendments rendered the subject-matter of claim 1 novel and inventive in view of the submissions presented by the appellant and the preliminary opinion of the Board. Regarding novelty and inventive step, the respondent only referred generally to points 9.2 and 9.3 of its letter dated 28 September 2017.

- 7.5 In the oral proceedings, the respondent argued that the later filing was justified because the appellant had filed an enormous amount of objections, of which only some had preliminarily convinced the Board. It therefore regarded it as appropriate to file a new request (together with other requests) only at that stage, and that it was in fact more sensible to react only to the objections the Board provisionally considered relevant.

The Board does not find this argument persuasive, not least as it goes against the concept of procedural economy. According to the established Case Law of the Boards of Appeal, even when considering the previous RPBA 2007 (see Case Law Book 9th Edition, section V.A. 4.4.2a)), parties are expected to react at the earliest possible moment for reasons of procedural economy and an amendment at a late stage in the proceedings is justifiable if it is an appropriate and immediate reaction to unforeseeable developments in the previous proceedings which do not lie in the responsibility of

the party submitting the amendment. The revised RPBA 2020 further reinforce the importance of procedural economy.

Since all the objections and arguments were already put forward with the complete case of the appellant in its grounds of appeal, the responding party could be expected to present its complete case with its reply. That a central theme of the appellant's case was its objections to the breadth of the feature "a housing" and how this could be read onto the prior art, could hardly go unnoticed. Instead, as its complete case in reply, the respondent filed nine auxiliary requests and, albeit procedurally of little meaning, even pointed to the possibility ("reserve the right") of filing nine more, notably however none of them corresponding to auxiliary request 11. At that point, the respondent also did not argue that under the circumstances (whatever they might have been in view of the respondent) even further auxiliary requests would have been justified.

- 7.6 The respondent further argued that the interpretation of the feature "a housing" adopted by the Board in its preliminary opinion was diametrically opposed to that of the opposition division although the arguments from the appellant had not changed and this thus triggered the need for further auxiliary requests.

The Board, again, does not concur. The interpretation of the feature "a housing" adopted by the Board (see points 1.5 and 1.6 above) corresponds to the one consistently argued by the appellant during the opposition and appeal proceedings (see e.g. letter dated 7 October 2016, points D.1.2 and D.2.4) and therefore is not a new issue brought up by the Board

that might justify an amendment to the case. Merely because the Board follows the arguments of the appellant cannot be considered to be an unexpected turn of events. The whole nature of an appeal is that one or more aspects of a decision by the department of first instance are contested, with the purpose of overturning the decision.

7.7 The Board therefore exercised its discretion according to Article 13(1) RPBA 2020 not to admit auxiliary request 11 into the proceedings.

7.8 In the absence of any request which meets the requirements of the EPC, the patent has to be revoked (Article 101(3)(b) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated