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**Datasheet for the decision  
of 10 June 2021**

**Case Number:** T 1031/17 - 3.2.06

**Application Number:** 05076913.2

**Publication Number:** 1609902

**IPC:** D06F37/28, D06F39/14

**Language of the proceedings:** EN

**Title of invention:**

A door and a drum type washing machine and a clothes drier  
using the same

**Patent Proprietor:**

LG Electronics, Inc.

**Opponents:**

Patentwerk B.V.  
BSH Hausgeräte GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 76(1)  
RPBA 2020 Art. 12(2), 13(1)

**Keyword:**

Divisional application - subject-matter extends beyond content  
of earlier application - main request (yes)  
Late-filed auxiliary requests - amendments give rise to new  
objections (yes)

**Decisions cited:**

G 0003/89, G 0011/91, G 0002/10

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 1031/17 - 3.2.06**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 10 June 2021**

**Appellant:**  
(Opponent 2)

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**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
2 March 2017 concerning maintenance of the  
European Patent No. 1609902 in amended form.**

**Composition of the Board:**

<b>Chairman</b>	P. Cipriano
<b>Members:</b>	M. Hannam
	A. Jimenez

## **Summary of Facts and Submissions**

- I. An appeal was filed by the appellant (opponent II) against the interlocutory decision of the opposition division in which it found that European patent No. 1 609 902 in an amended form met the requirements of the EPC. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- II. The respondent (patent proprietor) requested that the appeal be dismissed.
- III. With letter dated 12 July 2018 the respondent filed auxiliary requests 1 to 3.
- IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 of the main request appeared to extend beyond the content of the earlier application as filed, contrary to the requirements of Article 76(1) EPC. It further indicated that the subject-matter of claim 1 of each of the auxiliary requests 1 to 3 seemed not to overcome this objection.
- V. With its submission of 1 July 2020 the respondent filed new auxiliary requests 2 to 6.
- VI. Oral proceedings as a video conference were held before the Board on 10 June 2021, during which the respondent withdrew auxiliary requests 1 to 5 and filed a further auxiliary request 7.
- VII. At the end of the oral proceedings, the parties' requests were as follows:

The appellant requested that the decision under appeal be set aside and the European patent No. 1 609 902 be revoked.

The respondent requested that the appeal be dismissed (main request) or, in the alternative, that the patent be maintained according to auxiliary request 6, filed with letter of 1 July 2020 or according to auxiliary request 7 filed during the oral proceedings.

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

"A door for a washing machine or dryer (60) comprising:  
an inner frame (62) and an outer door frame (64) both being formed as rings and being joined together, at least one thereof being connected to a cabinet of the washing machine or dryer;  
a door glass (63) fixed between the inner frame and the outer frame;  
a recess portion provided in a surface of the outer frame; and  
the recess portion has a depth and a width enough to put a hand in so as to open and close the door, wherein an inner circumferential surface of the outer frame is sloped so as to expose an opening of the recess portion."

Claim 1 of auxiliary request 6 reads as follows:

"A door for a washing machine or dryer (60) comprising:  
an inner frame (62) and an outer door frame (64) both being formed as rings and being joined together, at least one thereof being connected to a cabinet of the washing machine or dryer;  
a transparent door glass (63) having an edge positioned

between, and fixed to, the inner frame and the outer frame; and  
a handle in the form of a recess is provided in an inner circumferential surface of the outer frame and has a depth and a width enough to put a hand in so as to open and close the door,  
wherein an inner circumferential surface of the outer frame is sloped so as to expose an opening of the recess portion."

Claim 1 of auxiliary request 7 reads as follows:

"A door for a washing machine or dryer (60) comprising:  
an inner frame (62) and an outer door frame (64) both being formed as rings and being joined together, at least one thereof being connected to a cabinet of the washing machine or dryer;  
a transparent door glass (63) having an edge positioned between, and fixed to, the inner frame and the outer frame; and  
a handle including a cavity recessed into a thickness of an inner circumferential surface of the outer frame and with a depth and a width enough to put a hand in so as to open and close the door,  
wherein an inner circumferential surface of the outer frame is sloped so as to expose an opening of the handle."

IX. The appellant's arguments relevant to the present decision may be summarised as follows:

*Main request*

The subject-matter of claim 1 extended beyond the content of the earlier application as filed. The deletion of the transparent door glass and the handle

on the door at least lacked basis. The three-point essentiality test could not replace the 'gold' standard which remained the only determinative test for added subject-matter. The overall teaching of the entire description related to a transparent door glass, such a transparency also being directly related to the problem being addressed by the invention of 'improving an overall appearance' of the washing machine and drier. As regards the omission of the 'handle', the replacement expression 'recess portion' was not disclosed in the earlier application as filed. The recitation of 'so as to open and close the door' was also very broad and encompassed an arrangement with a magic eye and a spring-loaded door which was not originally disclosed.

*Auxiliary request 6*

Auxiliary request 6 should not be admitted since it was an amendment to the respondent's appeal case filed only after receipt of the preliminary opinion of the Board. The claim also *prima facie* introduced a lack of clarity with an antecedent for 'the recess portion' missing.

*Auxiliary request 7*

Auxiliary request 7 should also not be admitted. Having been filed at such a late stage and involving complex additions and deletions, adjournment of the proceedings would be required to fully study the request at any more than a *prima facie* level. Claim 1 also introduced features from the description which could not be addressed at such a late stage. The amendments to the request also introduced a new clarity objection since it was not clear how a cavity could be recessed into a thickness of a surface, a surface not possessing a



thickness.

- X. The respondent's arguments relevant to the decision may be summarised as follows:

*Main request*

The subject-matter of claim 1 met the requirements of Article 76(1) EPC. The deletion of the door glass being transparent and the handle formed in a form of a recess did not extend the claimed subject-matter beyond the content of the earlier application as filed, since the skilled person saw these as non-essential to the invention in the light of the problem to be solved. This problem was to improve the overall appearance of the outer frame by eliminating the projecting handle (cf. page 2, lines 16 to 17 and page 10, lines 5 to 10); the transparency of the glass door was thus not relevant to the problem to be solved. It was necessary to consider the implicit disclosure of the original application, as included in the wording of the 'gold' standard, and the 3-point essentiality test and the intermediate generalisation test facilitated this. Additionally, page 2, lines 8 to 10, page 7, lines 14 to 15 and page 9, lines 16 to 20 all disclosed a door glass without a limitation to this being transparent. As regards the omission of the term 'handle', the claimed recess portion functioned as a handle and, with the two terms being used interchangeably in the earlier application, the inclusion of the recess portion in claim 1 ensured that the claimed subject-matter had basis. Page 3, lines 1 to 2 of the earlier application disclosed the 'handle formed in a form of a recess' such that the claimed recess portion functioned as a handle; the handle was a recess or the recess was the handle. Opening and closing of the door required

movement of the door about its hinges, not simply unlocking or locking, such that a magic eye in the recess would not enable a hand inserted into the recess portion to open and close the door. Page 7, lines 9 to 11 elucidated the two possible interpretations of 'opening/closing of the door', the first related to the hook 65 being a locking/unlocking action, the second with the handle 70 being for opening/closing the door through rotation about the hinge. The second interpretation was clearly the one claimed due to the recess acting as a handle.

*Auxiliary request 6*

This request was a combination of auxiliary requests on file before the opposition division. In substance, claim 1 now addressed all the objections raised by the appellant in its grounds and so the request should be admitted. The 'recess portion' was evidently the same physical feature as the 'recess' and thus did not lack an antecedent and did not result in a *prima facie* lack of clarity of the claim.

*Auxiliary request 7*

Auxiliary request 7 should be admitted since the discussion during oral proceedings introduced new objections (omission of the thickness of the circumferential surface and of the handle including a cavity) which could not have been addressed sooner. All the objections were consequently addressed with a simple request which introduced no new objections and which would not require an adjournment in order to analyse the claimed subject-matter adequately.

## Reasons for the Decision

### *Main request*

#### 1. *Article 76(1) EPC*

The subject-matter of claim 1 extends beyond the content of the earlier application as filed, contrary to the requirement of Article 76(1) EPC.

1.1 In the Enlarged Board of Appeal decisions G 3/89 and G 11/91, it was ruled that any amendment to a European patent application or a European patent relating to the disclosure can, irrespective of the context of the amendment made, only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of these documents as filed. Subsequently in G 2/10, this was referred to as the 'gold' standard for assessing any amendment for its compliance with Article 123(2) EPC. The Board sees this as applying equally to the corresponding requirement of prohibition of added subject-matter under Article 76(1) EPC.

1.2 The respondent's reference to the three-point essentiality test and the intermediate generalisation test to assist in identifying whether amendments made meet the requirement of Article 76(1) EPC is not seen to replace the 'gold' standard.  
It may, as opined by the respondent, assist in the evaluation of whether amended subject-matter is implicitly, as opposed to explicitly, disclosed in the documents as filed but, even if the amended subject-matter were found to meet the essentiality and intermediate generalisation tests, the Board holds

that, in the present case, evaluation according to the 'gold' standard is still necessary and is to be seen as the ultimate yard-stick in the evaluation of the amended subject-matter. The respondent did not bring forward any arguments as to why the 'gold' standard did not apply in the present case.

1.3 The deletion of the door glass being transparent from claim 1 of the earlier application as filed extends the subject-matter of claim 1 beyond the content of the earlier application as filed.

1.3.1 The respondent's argument that the entirety of the earlier application as filed should be considered as the teaching for the skilled person, rather than just individual passages therefrom is not questioned. Nonetheless, when considering the application as a whole, the door glass is addressed in a plurality of places yet provides the skilled person with the overall teaching of a transparent door glass. Not least, the recitation of the object of the invention starting at page 2, line 23 of the earlier application as filed includes a transparent door glass, whilst 'another aspect of the invention' starting at page 3, line 17 and a 'further aspect' from line 25 both explicitly comprise a transparent door glass.

1.3.2 The respondent's reference to page 2, lines 8 to 10 relates to a prior art washing machine and drier door. Even if this discloses a 'door glass' generally, it cannot provide a direct and unambiguous indication to the skilled reader that such a general door glass is the one intended for the disclosed invention, particularly when, as indicated in point 1.3.1 above, the general disclosure of the invention explicitly

includes a transparent door glass.

- 1.3.3 A reference to page 7, lines 14 to 15 of the earlier application is also unpersuasive in providing basis for the door glass not being transparent. The sentence immediately before in lines 12 to 13 introduces 'a transparent door glass 63' such that the recitation of '*the* door glass 63' in line 14 unambiguously refers to the 'transparent door glass' of the previous line bearing the same reference sign.
- 1.3.4 The respondent's further reference to 'the door glass 63' in the paragraphs from lines 16 to 20 of page 9 again uses the same reference sign as used for the transparent door glass in line 13 of page 7, such that the skilled reader would also see this reference, in the context of the entire disclosure, as unambiguously being to the same transparent door glass disclosed before, the dropping of the adjective 'transparent' only avoiding an unnecessary repetition of words.
- 1.3.5 For all of the reasons in points 1.3.1 to 1.3.4, the Board can see no reason why, contrary to the opinion of the respondent, a non-transparent door glass can be seen as being implicitly disclosed to the skilled person in the earlier application as filed. Rather, the direct and unambiguous disclosure is for quite the opposite: a transparent door glass.
- 1.3.6 Even considering the respondent's argument that the deletion of the term 'transparent' met the three-point essentiality test, this does not override the finding according to the 'gold' standard above that the amended subject-matter is not directly and unambiguously disclosed to the skilled person.

- 1.4 The deletion of the 'handle formed in the form of a recess' from claim 1 of the earlier application as filed also extends the subject-matter of claim 1 beyond the content of the earlier application as filed.
- 1.4.1 In this regard it is noted that a 'handle' has a specific nature to enable it to be gripped and manipulated in some way (e.g. by turning and/or pulling). Replacement of this feature in the present claim 1 with 'the recess portion having a depth and a width enough to put a hand in so as to open and close the door' lacks such limitation. The replacement feature in claim 1 moreover encompasses a hand opening/closing the door in any manner e.g. in the form of a magic eye or a push button located in the recess to enable opening/closing of the door, which was not disclosed in the earlier application as filed.
- 1.4.2 The respondent's argument that the expression 'so as to open and close the door' in claim 1 required movement of the door about its hinges rather than simply unlocking or locking the door is not accepted. Firstly, claim 1 fails to define the extent of opening of the door such that merely 'cracking open the door' would fulfill the claimed expression. The claim also fails to limit the opening of the door to that achieved by physical 'pulling open' by the user; consequently the door being arranged so as to spring open to a degree, also pointed out by the appellant to be a not uncommon arrangement for washing machine and drier doors, when unlocked (e.g. by activation of a magic eye), would also be a technically reasonable arrangement falling under the scope of the amended claim, yet clearly not being disclosed in the earlier application as filed. The respondent's further reference to page 7, lines 9 to 11 for interpretation of the 'opening/closing of the

door' does not change the Board's finding in this regard. Quite on the contrary, the 'hook 65 for opening/closing of the door' in line 9 clearly relates to the hook in a locking capacity (i.e. the skilled person would understand from this passage that the door is open when the hook is not locking it) such that the respondent's contention regarding the expression 'opening/closing' requiring movement of the door about its hinges is not supported by this portion of the description, even if the subsequent lines 10 to 11 reciting a 'handle for opening/closing the door' were to suggest a hand gripping the handle for movement of the door about its hinges.

- 1.4.3 It thus follows that a 'magic eye' for opening and closing the door corresponds to 'a recess portion having a depth and a width enough to put a hand in so as to open and close the door' as defined in claim 1 but not to a 'handle formed in a form of a recess' as disclosed in the earlier application as filed.
- 1.4.4 The respondent argued that the earlier application clearly disclosed the 'handle formed in a form of a recess' (see page 3, lines 1 to 2) such that the claimed recess portion functioned as a handle and that these expressions were thus interchangeable. However, the expression 'recess *portion*' is disclosed nowhere in the earlier application as filed. Even if a recess portion could function as a handle in certain structural arrangements of the recess portion, a recess portion is not to be found in the earlier application. In addition, the portion of the earlier application on page 3, lines 1 to 2 referred to by the respondent defines the handle in terms of a recess's form and thus provides no direct and unambiguous disclosure that the 'handle' can be substituted by a more general 'a recess

portion' (i.e. without the implicit limitations of a handle referred to in item 1.4.1) of particular dimensions. This passage therefore fails to address the objection that the replacement of the handle of claim 1 with the more general 'recess portion having a depth and a width enough to put a hand in so as to open and close the door' lacks basis.

1.5 In summary, therefore, at least the deletion of the 'transparent' nature of the door glass and of the 'handle formed in a form of a recess' from claim 1 of the earlier application extends the subject-matter of claim 1 beyond the content of the earlier application as filed.

1.6 Consequently the subject-matter of claim 1 fails to meet the requirement of Article 76(1) EPC. The main request is therefore not allowable.

*Auxiliary request 6*

2. *Admittance, Article 13(1) RPBA 2020*

2.1 Having been filed by the respondent as an amendment to its complete appeal case after its reply to the grounds of appeal, the admittance of this request is at the discretion of the Board under Article 13(1) RPBA 2020. One requirement placed on such requests filed at a late stage in the appeal procedure is that the new claims should be *prima facie* allowable in the sense that they overcome all outstanding objections and that they do not give rise to new objections.

2.2 As to the respondent's contention that this auxiliary request was simply a combination of auxiliary requests on file before the opposition division and should thus



not be considered 'new', this is not accepted.

Irrespective of an auxiliary request's existence before the opposition division, it must still be filed afresh in the statement of grounds of appeal and the reply in order to be included in a party's complete appeal case (see Article 12(3) RPBA 2020).

- 2.3 Claim 1 of auxiliary request 6 has been amended to define a handle in the form of a recess, rather than a recess portion, provided in a surface of the outer frame. The last feature in claim 1, however, recites 'the recess portion' with a definite article 'the'. This recitation of 'the recess portion' lacks an antecedent such that it is not clear whether this recess portion is in fact the same feature, as opined by the respondent, or a separate feature to the earlier recitation of 'a recess'.
- 2.4 The respondent's argument that the 'recess portion' was clearly the same physical feature as the 'recess' recited earlier in claim 1 is not accepted. The use of different terminology points to the 'recess' and the 'recess portion' being distinct, separately identifiable features. Nothing in claim 1 unambiguously suggests the two expressions to denote the same physical feature and, even consulting the description for clarification, the expression 'recess portion' is nowhere to be found such that a matching of 'recess' with 'recess portion' is not disclosed.
- 2.5 It thus follows that claim 1 of auxiliary request 6 *prima facie* at least lacks clarity contrary to Article 84 EPC.
- 2.6 With the amendments to claim 1 introducing a new objection, auxiliary request 6 is *prima facie* not

allowable. Consequently the Board exercised its discretion under Article 13(1) RPBA 2020 not to admit auxiliary request 6 into the proceedings.

*Auxiliary request 7*

3. *Admittance, Article 13(1) RPBA 2020*

3.1 This request was filed at oral proceedings after the Board's conclusion regarding auxiliary request 6 had been announced. It was thus filed at a very late stage of the appeal proceedings and its admittance was at the discretion of the Board under Article 13(1) RPBA 2020. Of particular importance in the exercise of this discretion was the *prima facie* allowability of the request.

3.2 Despite the request being limited to a single claim, the amendments to claim 1 included both additions and deletions such that claim 1 was not convergent with claim 1 of the foregoing auxiliary request 6 and resulted in a not insignificant degree of complexity in the claim. The additional features introduced were also taken from the description such that the amendments were completely unexpected. As also argued by the appellant, the resultant amended claim thus had such a degree of complexity to make it too complex to adequately consider without a significant break in, or even adjournment of, the oral proceedings.

3.3 The respondent's argument that it had been unable to present this request any sooner since the objections had only been introduced at oral proceedings is not persuasive for the Board to admit the request. The objections alleged to have only been tabled at oral proceedings were raised in relation to claim 1 of

auxiliary request 6, which itself was a change of the respondent's complete appeal case, filed only after the Board had provided its preliminary opinion. The objections thus could not have been tabled any sooner and were a direct consequence of the amended requests filed by the respondent in reaction to the preliminary opinion. The respondent's justification for filing auxiliary request 7 at such a late stage is thus not convincing. In this regard it should also be noted that the appeal procedure is not to be treated as a continuation of the examination of a patent application, where repeated amendment can be acceptable. Rather, it should primarily serve as a judicial review of the decision under appeal (see also Article 12(2) RPBA 2020).

- 3.4 Considering the substance of the request, claim 1 now recited 'a handle including a cavity recessed into a thickness of an inner circumferential surface of the outer frame'. It is unclear how a surface, which is a two dimensional structure, can have a cavity recessed into its thickness. The respondent's argument that the cavity would be understood as having an opening in the surface is not accepted. No opening in the surface is defined, rather the cavity should be recessed into the thickness, which linguistically does not make technical sense. *Prima facie*, therefore, claim 1 has given rise to a new objection of lack of clarity.
- 3.5 For all the above reasons, the Board thus exercised its discretion under Article 13(1) RPBA 2020 not to admit auxiliary request 7 into the proceedings.

**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:



D. Grundner

P. Cipriano

Decision electronically authenticated