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**Datasheet for the decision
of 3 December 2021**

Case Number: T 2193/17 - 3.2.06

Application Number: 11805224.0

Publication Number: 2655727

IPC: D06F75/10, D06F75/12, D06F75/26

Language of the proceedings: EN

Title of invention:
STEAM IRONING DEVICE

Patent Proprietor:
Koninklijke Philips N.V.

Opponents:
Beetz & Partner mbB
De'Longhi Deutschland GmbH

Headword:

Relevant legal provisions:
EPC Art. 100(c), 111(1)
RPBA 2020 Art. 13(2)

Keyword:

Amendments - added subject-matter (yes)

Amendment after summons - exceptional circumstances (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 2193/17 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 December 2021

Appellant:
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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 18 July 2017
rejecting the opposition filed against European
patent No. 2655727 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	E. Kossonakou

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. 2 655 727. It requested that the decision under appeal be set aside and the patent be revoked.
- II. A notice of intervention against the European patent was also filed by a third party although this was withdrawn without any objections or arguments relevant to the present decision having been made.
- III. In its letter of response, the respondent (patent proprietor) requested that the appeal be dismissed, or that the patent be maintained according to auxiliary request 1.
- 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 ground for opposition under Article 100(c) EPC was considered to be prejudicial to maintenance of the patent as granted and that the subject-matter of claim 1 of auxiliary request 1 appeared not to meet the requirement of Article 123(2) EPC.
- V. With letter of 7 October 2021 the appellant indicated that it would not participate in the scheduled oral proceedings.
- VI. With letter of 10 November 2021 the respondent provided arguments countering the Board's provisional opinion.

VII. Oral proceedings were held before the Board on 3 December 2021 in the absence of the appellant, during which the respondent filed auxiliary requests 2 and 3 and withdrew auxiliary request 1.

The final requests of the parties were thus as follows:

The appellant 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, alternatively that the patent be maintained on the basis of auxiliary request 2 filed during the oral proceedings or, finally, that the case be remitted to the opposition division (auxiliary request 3 also filed during the oral proceedings).

VIII. Claim 1 of the main request (patent as granted) reads as follows:

"A steam ironing device (1), comprising:
an iron (10), including a soleplate (18) provided with at least one steam outlet opening (20);
soleplate heating means (22) configured to heat the soleplate (18);
a steam generator (50) including a heatable steam generation chamber (51) that is fluidly connectable to the at least one steam outlet opening (20) in the soleplate; and
control means (24, 56), operably connected to the soleplate heating means (22) to control a soleplate temperature to a non-user-adjustable temperature in the range of 105-145°C, and characterized in that the control means (24, 56) are operably connected to the steam generator (50) to control steam settings to a non-user-adjustable temperature in the range of

100-150°C at a time-averaged steam rate of at least 50 grams/minute.

The wording of auxiliary request II is attached as an annex.

The wording of auxiliary request III is as follows:

"Remittal of the case to the department of first instance with the order to establish if it were correct that, what the patent proprietor stipulated, a person skilled in the art would have assumed, due to what he was aware of in the ordinary prior art of steam irons, that "using steam at temperatures of less than 150°C" (application as filed, page 5, line 27 & claim 5 as filed) implies a non-user adjustable steam temperature."

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

The subject-matter of claim 1 lacked basis in the application as filed. The claimed non-user-adjustable temperature in the range of 100 to 150°C was disclosed solely on page 6, lines 28 to 30. This was however not a clear and unambiguous disclosure since it could be interpreted as either one, or the other, or both parameters as being non-user-adjustable. Further, steam rate and steam temperature were the steam settings which together determined ironing temperature as a whole, so it followed that steam settings referred to both rate and temperature. Also, the expression 'steam rate settings' was used on page 7, lines 14 to 20 when reference just to the steam rate was intended. Additionally, page 6, lines 31 to 33 explained the advantages of non-user-adjustable steam settings, and

referred to the advantage 'there is no need for special user controls', such that having a non-user-adjustable steam temperature but not steam rate would not provide such an advantage. Consequently, the isolated introduction of 'non-user-adjustable steam temperature' without a non-user adjustable steam rate was not clearly and unambiguously disclosed.

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

Main request

Article 100(c) EPC was not prejudicial to maintenance of the patent as granted. As regards page 6, lines 28 to 30, the steam rate and steam temperature in this passage of the description were preceded by 'e.g.' such that these were to be seen as merely examples of steam settings which could be non-user-adjustable.

The basis for the subject-matter of claim 1 was claims 1 and 5 as filed in combination with page 5, lines 26 to 28, all when seen in the context of the disclosure as a whole.

In the light of the application as filed, the skilled reader would note that user-adjustable steam temperature was not once disclosed. Additionally, from their understanding of the technical field of ironing devices, it was clear that steam temperature and steam pressure were essentially never user-adjustable parameters. This was the background to the invention to the unbiased reader, such that they would not see user-adjustable steam temperature as being present in this application either. Consequently, non-user-adjustable steam temperature was implicitly disclosed in the

entirety of the application as filed and its inclusion in claim 1 was not prejudicial. This was corroborated on page 3, lines 26 to 29 which indicated the object of the present invention being to provide satisfactory ironing results without requiring the user to adapt any ironing settings.

Steam settings were disclosed on page 9, lines 23 to 25 to be at least the steam rate, temperature and pressure. Moreover, since the skilled person implicitly understood that steam temperature and pressure were non-user-adjustable, any discussion of steam settings being adjusted in the application as a whole could only be referring to an adjustment of steam rate. This was supported by claim 3 as filed which specifically defined the steam rate to be non-user-adjustable, such that claim 1 by implication covered both user-adjustable and non-user-adjustable steam rate control, which were anyway the only two possibilities.

Page 6, lines 27 to 30 disclosed that 'the steam settings, e.g. steam rate and steam temperature, may also be non-user-adjustable'. Since the steam temperature and the steam rate were independent parameters, this passage supported the steam temperature alone being non-user-adjustable. This was further supported by the drafter of the application solely including the steam rate being non-user-adjustable in claim 3 as filed, the steam temperature implicitly being non-user-adjustable. Claim 3 also contradicted the Board's reading of the sentence on page 6, lines 28 to 30. With steam settings being defined differently in different parts of the application, it was furthermore not clear that the disclosure on page 6, lines 28 to 30 of steam rate and steam temperature being non-user-adjustable was to be

considered as a single, combined disclosure. The 'unbiased reader' would see these as being individually non-user-adjustable.

Page 5, lines 25 to 29 disclosed 'using' steam at temperatures less than 150°C which clearly indicated the designer of the iron control system dictating this, rather than the user. This was so, not least because the passage stated that choosing too high a steam temperature was known to cause too little steam to condense in the clothing, which in turn meant that the word 'chosen' in this passage could only have been referring to a steam temperature being chosen by the manufacturer.

Should claim 1 be seen as an intermediate generalisation of that which page 6, lines 27 to 30 disclosed, the steam rate and the steam temperature were not inextricably linked such that both these steam settings did not need to be included in claim 1. These two parameters were disclosed as serving different purposes. The steam rate directly improved the ironing results (see page 4, lines 27 to 30) whereas the steam temperature contributed to heating and moistening the laundry being ironed (see page 5, lines 22 to 24). A functional link between the two parameters was thus missing.

Auxiliary request 2

This request should be taken taken into account under Article 13(2) RPBA 2020 by the Board due to exceptional circumstances justifying this. It only became clear during discussion at the oral proceedings that, despite it being known in the the prior art to an unbiased skilled reader that only non-user-adjustable steam

temperature was used, the Board failed to accept the non-user-adjustable steam temperature not being implicit in the application as filed.

Auxiliary request 3

Since the Board's conclusion on this matter was different to that of the opposition division, the case should be remitted to allow examination of the issue of what the skilled person's understanding of steam temperature adjustability was at the time of filing.

Reasons for the Decision

1. *Main request*

1.1 *Article 100(c) EPC*

The ground for opposition under Article 100(c) EPC prejudices maintenance of the patent as granted.

1.2 Claims 1 and 5 as filed in combination with page 5, lines 26 to 28 provide a basis for all features of claim 1 of the main request with the exception of 'the control means are operably connected to the steam generator to control steam settings to a non-user-adjustable temperature in the range of 100-150°C'.

1.2.1 In the entirety of the application as filed, the sole explicit disclosure of the steam temperature being non-user-adjustable is on page 6, lines 28 to 30, which reads
'In addition, in some embodiments of the ironing device the steam settings, e.g. the steam rate and steam temperature, may also be non-user-adjustable.'

This does not provide a direct and unambiguous basis for a skilled person to derive the claimed condition that steam temperature is non-user-adjustable without the steam rate also being non-user-adjustable. Lines 28 to 30 state that 'e.g. the steam rate and steam temperature, may also be non-user-adjustable', yet this can be interpreted as applying to the two steam parameters individually in some way (steam rate / steam temperature) or both of the steam parameters together. The Board however notes that lines 31 to 33 of col. 6, immediately following those cited above, state that 'Non user-adjustable soleplate temperature and steam settings enable the construction of a simpler ironing device ... since there is no need for special user controls'. This underlines the latter interpretation (both steam parameters together) as being the more logical understanding since if only non-user-adjustable steam temperature were intended as the 'steam settings', steam rate would still be user-adjustable thus not fulfilling the stated requirement of 'no need for special user controls'. Consequently, this passage at least fails to provide the required direct and unambiguous disclosure of the claimed condition, that solely the steam temperature is non-user-adjustable.

- 1.2.2 The respondent's argument in this regard that the steam rate and steam temperature in this passage of the description were preceded by 'e.g.' such that these were to be seen as merely examples of steam settings which could, individually, be non-user-adjustable is not accepted. Whilst the respondent's premise is indeed a possibility, it is not unambiguous from the wording in question that it is solely the steam temperature which is to be understood as being non-user-adjustable. The fact that the two parameters are preceded by 'e.g.' does not change the reader's understanding that indeed

both of the parameters together could be non-user-adjustable, this interpretation also being technically reasonable.

1.2.3 As for the respondent's observation that user-adjustable steam temperature was not once disclosed in the application as filed, it is not accepted that this results in an unambiguous disclosure of non-user-adjustable steam temperature. A lack of disclosure of a particular feature in an application does not usually allow any conclusions to be drawn regarding the relevance of such an omission. The feature might for example have been omitted because it was simply irrelevant to the claimed invention and thus did not warrant a mention. It is certainly not appropriate to infer from silence regarding any particular feature, that the drafter of the application omitted it with the intention of thereby implicitly disclosing the negative of the feature omitted, as alleged by the respondent. More importantly any conclusion that failure to mention a feature implies that the negative of that feature is disclosed would not be an unambiguous corollary.

1.2.4 The respondent's observation that claim 3 as filed disclosed non-user-adjustable steam rate such that page 6, lines 28 to 30 must therefore additionally be disclosing solely the steam temperature as being non-user adjustable is unfounded. This passage on page 6, whilst being in the 'summary of the invention' portion of the description, does not clearly have any direct relationship to claim 3 as filed. This is not least the case due to the preceding sentence describing the 'present invention' only optionally having a non-user-adjustable soleplate temperature, which is however a feature explicitly defined in claim 1. Any clear link between lines 28 to 30 of page 6 and claim 3 as filed

is simply missing, such that the respondent's corollary that solely steam temperature was actually disclosed to be non-user-adjustable in lines 29 to 30 is simply an invalid conclusion drawn from an ambiguous disclosure.

- 1.2.5 The respondent's further argument that steam settings were defined differently across the application as filed (e.g. page 4, lines 8 to 12; page 6, line 29 and page 9, lines 24 to 25) such that the skilled reader would therefore not see the steam rate and steam temperature on page 6, line 29 as being a single, combined disclosure, is not accepted. As indeed indicated by the respondent in regard to certain of these citations, each of these offers a different understanding of what is to be regarded as 'steam settings':
- Page 4, lines 8 to 12 suggests steam settings to solely be a minimum steam rate;
- Page 6, line 29 offers steam rate and steam temperature as examples of steam settings; and
- Page 9, lines 24 to 25 suggests steam rate, steam temperature and steam pressure.

From this, contrary to the opinion of the respondent, it is evident that the sentence addressing that '... the steam settings, e.g. the steam rate and steam temperature, may also be non-user adjustable' (page 6, lines 29 to 30) is simply not a direct and unambiguous disclosure of just the steam temperature being non-user-adjustable.

- 1.2.6 The respondent's reference to claim 6 as filed that this provided further proof of just the steam temperature being non-user-adjustable is not convincing. Claim 6 defines the steam generator to be 'configured to release steam at a pressure of less than

6 bar'. This is, contrary to the opinion of the respondent, not an unambiguous disclosure of the steam pressure being non-user-adjustable, rather it solely defines that the steam generator is capable of producing steam at pressures less than 6 bar. Whether the pressure produced is selected by the user or by the control system without user input is left open. Claim 6 thus sheds no light on the steam pressure being non-user-adjustable and thus also no suggestion of the steam temperature alone consequently being implicitly non-user-adjustable in the application as filed.

- 1.3 At oral proceedings the respondent, notably for the first time in the entire proceedings, contended that essentially all steam irons known in the art comprised non-user-adjustable steam temperature such that the 'unbiased reader' would implicitly recognise this to be the case also in the present application. This contention was entirely unsupported by any evidence. Indeed, the respondent provided no basis for its contention, apart from relying on supposed personal experience of all participants at oral proceedings that no steam temperature adjustment would ever have been observed on steam irons that they had purchased or used. Even if this had been the case, this is not a basis which can prove that such systems are not known to the skilled person in the art, not least since the 'steam ironing device' of claim 1 is of such breadth that commercial devices are also covered which could indeed be designed differently from those domestic devices to which the respondent was referring. Indeed, the respondent did not refer to a single document representative of a 'typical' ironing device in the art with this feature, let alone provide evidence of this being the understanding of a skilled person, in order to substantiate its contention. The consequence of this

is that the Board was not able to establish, based on the respondent's argument alone, that steam ironing devices in the art generally have non-user-adjustable steam temperature. Consequently, the respondent's argument that the present application implicitly disclosed non-user-adjustable steam temperature is not convincing and can thus not sway the Board.

- 1.3.1 In further support of its contention, the respondent alleged that the skilled person knew, from their understanding of the technical field of ironing devices, that steam temperature and steam pressure were essentially never user-adjustable parameters. Again, this position of the respondent was not backed-up by any evidence. That the Board was unaware of such devices was not decisive; the Board is not the notional skilled person in this, or indeed any, technical field. Rather the skilled person is presumed to be a skilled practitioner in the relevant field of technology who *inter alia* is aware of what was common general knowledge in the art at the relevant date. Absent any evidence from the respondent that steam temperature and steam pressure were never user-adjustable parameters in the art, this allegation, brought for the first time at oral proceedings, is not accepted.

In regard to the lack of any evidence supporting its position, the respondent argued that it simply could not prove the negative. This statement tries to sidestep the fact that a party to proceedings bears the burden of supporting its allegation by shifting the focus to the alleged negative character of the disputed feature. Implicit features, such as those contended here by the respondent, are however not to be equated with negative ones and it is up to the party arguing their (implicit) existence to find the means of

establishing it.

- 1.3.2 The respondent's reference to page 3, lines 26 to 29 of the application as filed and its argument that the present invention was thus to provide satisfactory ironing results without requiring the user to adapt any ironing settings, does not change the Board's finding on this matter. The above passage relates to the problem indicated in the application as being solved by the invention. In this regard, the solution presented in claim 1 as filed has a non-user adjustable soleplate temperature and a time-averaged steam rate of at least 50g/min. It thus follows that the sole conclusion to be deduced from the above referenced passage, and its solution in claim 1 as filed, is that a non-user-adjustable soleplate temperature and a minimum time-averaged steam rate is required. Absolutely no deduction can be made from here regarding steam temperature being either user-adjustable or non-user-adjustable as this is simply not addressed, neither explicitly nor implicitly.
- 1.3.3 The respondent's repeated reference to the 'unbiased reader', and their seeing the steam temperature as being non-user-adjustable in the application as filed, does not persuade the Board that the steam temperature is implicitly non-user-adjustable. First, the Board does not recognise what the difference should be between an 'unbiased reader' and the skilled person. If there is a difference, then what is important is what the skilled person understands. For the Board, a disclosure is read by a skilled person, in this case a skilled person in the art of steam ironing devices. A skilled person reading the application would indeed notice that user-adjustability of steam temperature is never disclosed. However, this does not result in their

necessarily regarding the steam temperature as therefore being non-user-adjustable. The non-user-adjustability is not a direct and unambiguous consequence of the lack of a disclosure of user-adjustability. Rather, neither is disclosed, even if the scope of the disclosure covers both possibilities. Consequently, the requisite direct and unambiguous disclosure of non-user-adjustable steam temperature is not disclosed in the application as filed.

1.3.4 In summary, therefore, the Board finds that there is no implicit disclosure of non-user-adjustable steam temperature in the application as filed.

1.4 The respondent's further arguments in points 1.4.1 to 1.4.3 below are all based on the skilled person seeing non-user-adjustable steam temperature as implicitly disclosed. In finding this premise to be incorrect, the Board also sees the respondent's further arguments, as reasoned below, not to be persuasive.

1.4.1 The respondent's reference to page 9, lines 23 to 25 and its conclusion that only steam rate was to be understood as user adjustable is not accepted. This passage of the description discloses that the second control means may be configured to control the steam settings and provides examples of steam parameters which are considered as steam settings '... e.g. the steam rate, and the steam temperature and pressure.' Taking control of the steam settings by the second control means to imply non-user adjustability of the steam settings, nothing in this passage would lead the skilled person to unambiguously see steam temperature alone to be non-user-adjustable. It could be the case, as alleged by the respondent, that both steam temperature and pressure were non-user-adjustable, but

this is simply not the unambiguous teaching in the light of the application as a whole.

- 1.4.2 The respondent referred to claim 3 as filed, which defined the steam rate to be non-user-adjustable, and concluded that claim 1 by implication covered both user-adjustable and non-user-adjustable steam rate control. The Board can accept this interpretation of claim 1. However, the observation that in the claims as filed solely steam rate is indicated to be non-user-adjustable does not allow any conclusion regarding non-user-adjustability of steam temperature to be drawn. As already held in point 1.2.4 above, page 6, lines 28 to 30 when seen in combination with this observation of the respondent, does not allow any direct and unambiguous conclusion to be drawn relating to steam temperature being non-user-adjustable in the application as filed.
- 1.4.3 The respondent's argument that the passage on page 5, lines 25 to 29 disclosing 'using' steam at temperatures less than 150°C, clearly indicated that the designer of the iron control system, rather than a user, dictated this temperature, is not accepted. There is no basis in the paragraph from which this passage is taken, nor indeed anywhere else in the application as filed, to conclude that the expression 'using steam' can solely be interpreted as the control system dictating this, rather than a user. It is perfectly possible for a user to be responsible for selecting the desired steam temperature to be 'used' such that the expression 'using steam' is not decisive of the manner (control system or user) in which the steam temperature selection is disclosed. The respondent's further contention based on this passage of the description that a user clearly would not be given freedom to

choose the steam temperature produced by the steam ironing device is also not accepted. This passage of the description states 'if the temperature of the steam is chosen too high, too little steam may condense in the material', yet this fails to allow an unambiguous corollary to be drawn that the temperature must be non-user-adjustable. It is equally reasonable for the user to observe that the material is being moistened too little and for them to actively reduce the steam temperature. This disclosure is thus seen to be unspecific regarding the steam temperature adjustment being carried out by a user or not and the respondent's conclusion therefrom is mere supposition lacking an unambiguous disclosure.

1.5 The respondent indicated that, should the Board's preliminary opinion regarding the disclosure on page 6, lines 27 to 30 be maintained (i.e. both steam rate and steam temperature together being disclosed as non-user-adjustable), the objection would be of an unallowable intermediate generalisation which would require the steam rate and steam temperature to be inextricably linked; such a link was allegedly missing.

1.5.1 The suggestion of an intermediate generalisation existing in claim 1 was not raised by the appellant, nor had the Board suggested this in its preliminary opinion. Rather, both the appellant (see second paragraph on page 4 of the grounds of appeal) and the Board (see point 2.1 of the preliminary opinion) saw page 6, lines 28 to 30 as a single disclosure of non user-adjustable steam rate and steam temperature in combination. The omission of this combination of features led to the claimed subject-matter lacking basis.

- 1.5.2 If nonetheless the respondent's argument relating to a lack of an inextricable link between the steam rate and steam temperature is considered, the Board disagrees with the respondent's conclusion.
- 1.5.3 According to established jurisprudence, the extraction of an isolated feature from its specific context which results in an intermediate generalisation is justified only in the absence of any clearly recognisable functional or structural relationship among the features of the specific combination, or if the extracted feature is not inextricably linked with those features (see e.g. the Case Law of the Boards of Appeal, 9th edition 2019, II.E.1.9).
- 1.5.4 In the present case, both steam rate and steam temperature possess a functional link in respect of improving the ironing effectiveness. As much is disclosed in the application as filed, as explained below.

Regarding steam temperature, page 5, lines 22 to 28 discloses that 'steam is more effective in heating an item than a hot soleplate' and that 'if the temperature of the steam is chosen too high, too little steam may condense in the material to both transfer sufficient heat and suitably moisten the item's fabric'. The corollary of this is that steam temperature has an influence on ironing effectiveness.

Regarding steam rate, page 5, lines 30 to 32 discloses that 'a relatively high steam rate appears to provide for good ironing results'.

Therefore, with the application as filed itself disclosing the above, it follows that both steam

temperature and steam rate have an effect on ironing effectiveness such that a functional link between steam temperature and steam rate clearly exists.

1.5.5 The respondent's argument that steam rate and steam temperature lacked an inextricable link since steam rate improved ironing results whereas steam temperature contributed to heating and moistening the laundry being ironed, is not accepted. The Board fails to see how 'heating and moistening the laundry' through selection of steam temperature does not directly affect ironing results too. In the paragraph from page 5, line 33 to page 6, line 13, the influence of temperature and moisture in heating fibres to above their glass transition temperature is discussed. This removes stress in the fibres of the fabric allowing a wrinkle-free state of the fabric to be achieved. It thus follows that steam temperature indeed heats and moistens the laundry and, as a consequence, directly assists in achieving good ironing results.

1.5.6 In summary, the parameters of steam rate and steam temperature possess a functional link of improving ironing effectiveness. It thus follows that, if the respondent's interpretation of an intermediate generalisation is considered, the isolation of steam temperature alone as being non-user-adjustable (from page 6, lines 28 to 30) and inserting this into claim 1 is an unallowable intermediate generalisation of the original disclosure.

1.6 Summarising all of the above, the subject-matter of claim 1 of the main request lacks basis in the application as originally filed. The ground for opposition under Article 100(c) EPC therefore prejudices maintenance of the patent as granted. The

main request is thus not allowable.

2. *Auxiliary request 2*

2.1 This was filed at oral proceedings after the conclusion regarding the main request was announced. According to Article 13(2) RPBA 2020, an amendment to the party's appeal case (which this amended request gives rise to) shall not be taken into account unless there are exceptional circumstances justifying its filing at such a late stage of the appeal procedure.

2.2 The Board can see no exceptional circumstances in the present case justifying the filing of the new request during the oral proceedings. The objection under Article 100(c) EPC had been raised already in the notice of opposition and had been raised again with the appellant's grounds of appeal. Even though the opposition division had found in the respondent's favour on this issue, the Board finding differently is not an exceptional circumstance which can justify an amendment to the respondent's appeal case (indeed this is the purpose of the appellant's appeal), moreover not at almost the latest possible stage of the appeal procedure, during oral proceedings. The respondent's case anyway relied on contradicting part of the opposition division's reasoning in regard to Article 100(c) EPC (see item 3.3. of its decision), which states that it was clear that page 6, lines 29 to 30 disclosed that 'steam rate and/or steam temperature are either non-user-adjustable or user-adjustable', as this means that steam temperature could indeed be user-adjustable.

2.3 The respondent's argument that it only became clear during discussion at the oral proceedings that the

Board failed to accept the non-user-adjustable steam temperature as not being implicit in the application as filed, is not an exceptional circumstance. Indeed, as indicated in point 1.3 above, this particular defence of the subject-matter of claim 1 of the main request was raised by the respondent for the first time at oral proceedings such that the Board's opinion on this could not have been given sooner. Merely because the Board did not raise an objection under Article 13 RPBA 2020 to the respondent presenting this new argument during the oral proceedings, the fact that the argument had not been previously presented resulted in the Board having had no possibility to provide an opinion on this in its preliminary opinion.

2.4 With no other arguments regarding the late filing of this request submitted by the respondent, the Board found that no exceptional circumstances existed to justify auxiliary request 2 being taken into account. Under Article 13(2) RPBA 2020, auxiliary request 2 was thus not taken into account.

3. *Auxiliary request 3*

3.1 At oral proceedings the respondent also filed auxiliary request 3 which reads as follows:

"Remittal of the case to the department of first instance with the order to establish if it were correct that, what the patent proprietor stipulated, a person skilled in the art would have assumed, due to what he was aware of in the ordinary prior art of steam irons, that "using steam at temperatures of less than 150°C" (application as filed, page 5, line 27 & claim 5 as filed) implies a non-user adjustable steam

temperature."

3.2 With the Board having already concluded that the main request was not allowable and auxiliary request 2 was not to be taken into account, there were no claims of a request on the basis of which the case could be remitted to the opposition division for consideration of the posed question. Lacking a basis for the opposition division to consider, remittal would serve no purpose. Moreover, it was the action of the respondent which led to the situation in question, i.e. not only having brought forward this new argument during the oral proceedings for the first time, but also not having supplied any supporting evidence to back it up. Further, the question itself is framed in such a way that an opposition division is being asked to establish (in some unknown way) what a skilled person is supposed to be aware of, which is clearly not a task for an opposition division but a task of the party alleging such. Lastly, a remittal based on a new argument brought for the first time in oral proceedings would be clearly detrimental to procedural economy, it being noted that the respondent's right to be heard has been fully respected, since this issue was - despite its late submission - thoroughly discussed with the Board.

3.3 The request for remittal (Article 111(1) EPC) is therefore rejected.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated

Claims pursuant to auxiliary request II (with highlighted amendments)

1. A steam ironing device (1), comprising:
 - an iron (10), including a soleplate (18) provided with at least one steam outlet opening (20);
 - soleplate heating means (22) configured to heat the soleplate (18);
 - a steam generator (50) including a heatable steam generation chamber (51) that is fluidly connectable to the at least one steam outlet opening (20) in the soleplate; and
 - control means (24, 56), operably connected to the soleplate heating means (22) to control a soleplate temperature to a non-user-adjustable temperature in the range of 105-145°C, and characterized in that the control means (24, 56) are operably connected to the steam generator (50) to control steam settings to a ~~non-user-adjustable~~ temperature chosen in the range of 100-150°C at a time-averaged steam rate of at least 50 grams/minute, said steam ironing device (1) does not include a user control provided for adjusting said steam temperature.