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**Datasheet for the decision
of 9 May 2023**

Case Number: T 3276/19 - 3.2.06

Application Number: 14182921.8

Publication Number: 2990522

IPC: D06F58/20

Language of the proceedings: EN

Title of invention:

Heat pump laundry dryer

Patent Proprietor:

Electrolux Appliances Aktiebolag

Opponent:

Whirlpool EMEA S.p.A.

Headword:

Relevant legal provisions:

EPC Art. 56

RPBA 2020 Art. 12(4)

Keyword:

Inventive step - auxiliary requests 1, 1a (no)

Amendment to appeal case - amendment detrimental to procedural economy (yes)

Late-filed auxiliary requests 2, 3 and 4 - admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 3276/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 9 May 2023

Appellant: Electrolux Appliances Aktiebolag
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 November 2019 concerning maintenance of the
European Patent No. 2990522 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
W. Ungler

Summary of Facts and Submissions

- I. In its interlocutory decision the opposition division found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 2 990 522 met the requirements of the EPC.
- II. Appeals were filed by both the proprietor and the opponent.
- III. The appellant/proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request), auxiliarily that the opponent's appeal be dismissed (auxiliary request 1), or that the patent be maintained on the basis of one of auxiliary requests 1a, 2, 3 and 4 filed with the statement of grounds of appeal.
- IV. The appellant/opponent requested that the decision under appeal be set aside and the patent be revoked.
- V. The following documents are of relevance for this decision:
E1 EP 2 527 528 A1
E3 EP 1 508 636 A2
E4 EP 2 570 546 A1
E8 WO 2011/080121 A1
- VI. The Board issued a summons to oral proceedings and a subsequent communication in which it gave its provisional opinion *inter alia* mentioning that the skilled person would arrive at a dryer as defined in claim 1 of auxiliary request 1 without exercising an

inventive step and that the Board tended towards not admitting auxiliary requests 2-4 into the proceedings.

- VII. With letters dated 22 November 2022 and 24 April 2023, the opponent requested oral proceedings by videoconference.
- VIII. With letter dated 5 April 2023 the proprietor requested oral proceedings by videoconference.
- IX. Oral proceedings took place in person at the premises of the EPO in Haar. During the oral proceedings, the parties withdrew their requests for oral proceedings by videoconference and the proprietor withdrew its appeal.

The final requests of the parties were:

The respondent (patent proprietor) requested that the opponent's appeal be dismissed, or that the patent be maintained on the basis of one of auxiliary requests 1a, 2, 3 or 4 filed with the statement of grounds of appeal.

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

- X. Claim 1 of auxiliary request 1 (with the feature breakdown as set out in point 1.4 of the opponent's statement of grounds of appeal) reads as follows:

"a. A laundry dryer (1) including:

b. a casing (2) rotatably supporting a drum (3) for receiving a load to be dried, said drum (3) being apt to rotate around a drum axis (R), said casing (2) including

c. a rear wall (21) and a front wall (20), an aperture (4a) being realized on said front wall (20) to access said drum (3);

d. a basement (24) defining a basement plane (X,Y) and in which basement (24) a first longitudinal half (24 first half) and a second longitudinal half (24 second half) are identifiable by means of a first plane (P1) perpendicular to said basement plane (X,Y) and passing through said drum axis (R);

e. a process air conduit (18) in fluid communication with the drum (3) where a process air stream is apt to flow;

f. a heat pump system (30) having a heat pump circuit in which a refrigerant can flow, said heat pump circuit including

g. a first heat exchanger (31) where the refrigerant is cooled off and the process air is heated up, and

h. a second heat exchanger (32) where the refrigerant is heated up and the process air is cooled off;

i. said first heat exchanger (31) and/or said second heat exchanger (32) being arranged in the process air conduit (18) within said first longitudinal half (24 first half) of said basement (24) for the majority of their volume in order to perform heat exchange between said refrigerant flowing in said heat pump circuit and said process air;

j. said process air conduit (18) including a basement air duct formed in said basement (24), said basement

air duct comprising a basement duct portion (28) channeling said process air between a process air exit (28in) where process air exits from said first heat exchanger (31) and a process air outlet (19) where process air exits said basement (24),

k. said outlet (19) being located within said second longitudinal half (24 second half) of said basement (24),

l. said basement duct portion (28) including one or more duct walls (28w) which in a section along a sectioning plane (PT) parallel to said basement plane (X, Y) defines an inner curve (28b) and an outer curve (28a), said outer curve (28a) being the curve closer to the rear wall (21) of the casing (2) among the two curves (28a, 28b);

characterized in that

m. a tangent (T1, T2, T3) to said inner curve (28b) of said basement duct portion (28) in said second longitudinal half (24 second half) of said basement (24) forms an angle different from 90° with an axis (H1) formed by sectioning said first plane (P1) with said sectioning plane (PT) for at least between 90% and 100% of the length (L2) of the inner curve (28b) in said second longitudinal half (24 second half);

n. the laundry dryer (1) including a motor (50) defining a motor axis (M), apt to rotate said drum (3), said motor axis (M) being parallel to said first plane (P1),

o. wherein said motor includes a motor shaft (51) defining said motor axis (M), said shaft (51) passing

through said duct walls (28w), and a tangent (T) in a point (P) where said motor axis (M) intersects said inner curve (28b) forms an angle different from 90° with said motor axis (M)."

XI. Claim 1 of auxiliary request 1a differs from claim 1 of auxiliary request 1 in that the following feature p) has been introduced between features m) and n):

"p. a tangent (Ta1, Ta2) to said outer curve (28a) of said basement duct portion (28) in said second longitudinal half (24 second half) of said basement (24) forms an angle different from 90° with an axis (H1) formed by sectioning said first plane (P1) with said sectioning plane (PT) for at least between 90% and 100% of the length (L2') of the outer curve (28a) in said second longitudinal half (24 second half);".

XII. The proprietor's arguments relevant to the decision may be summarised as follows:

Auxiliary request 1 - Article 56 EPC

E4 in combination with common general knowledge

The subject-matter of claim 1 involved an inventive step.

Dependent claim 9 of E4 did not disclose feature m). Although claim 9 defined an air duct having one or more curved portions extending substantially over the whole air duct, there was no implicit disclosure which would prompt the skilled person to extend the curved portion of the air duct 24 as far as to the region behind the fan 20, i.e. to an extent such that 90-100% of the air duct would be curved, since the word "substantially" in

claim 9 of E4 did not mean that the duct itself had to extend any particular amount.

Feature n) was not disclosed since E4 did not disclose the arrangement of a drum nor a rotational connection between the motor and the drum. A further motor could possibly be provided to drive a drum.

Feature o) was not disclosed in E4 as the particular arrangement of the motor shaft with respect to the air duct portion was not disclosed for the embodiment of claims 1, 6 and 9 and Figure 4 showed that the motor axis made an angle of less than 90° to the inner duct wall.

The technical effect of feature o) was to reduce the turbulence of the process air flow at the point of the duct where the motor shaft crossed the second wall of the air duct, thus reducing pressure drops in the air duct.

It would not have been obvious for the skilled person to change the angle because this would create difficulties in sealing the gap between the shaft and the inner curve.

In addition, the passage of the shaft through more than one wall was not disadvantageous as any loss of air flow brought about by a more complicated duct design with the shaft passing through two walls could be compensated by other factors, such as an increase in the suction power of the fan.

Auxiliary request 1a - Article 56 EPC

As with feature m), an outer curve according to feature p) had the effect of improving the flow of the process air by making the outer curve and the surface up to the outlet smoother, as could be derived from paragraphs [0012] and [0041] of the patent.

There was no motivation for the skilled person to change the duct arrangement of Figure 4 of E4, since this arrangement already provided for a smooth flow with few discontinuities (as also described in paragraphs [0009] and [0015] of E4).

XIII. The opponent's arguments relevant to the decision may be summarised as follows:

Auxiliary request 1 - Article 56 EPC

E4 in combination with common general knowledge

The preferred embodiment of the invention in the description and figures of E4 disclosed the subject-matter of claim 1 (see in particular paragraphs [0009], [0015], [0022] and [0029]).

All the figures (see in particular Fig. 2) of E4 disclosed a spindle projecting from the motor (22) on the opposite side of the fan and coaxial with its shaft. This spindle was, or at least could be, provided in order to be connected to the drum's belt. E4 therefore disclosed feature n).

Feature o) did not provide any additional technical effect; it just provided an alternative arrangement to that of E4.

The patent did not refer to or disclose any sealing arrangements such that the skilled person would not be deterred from changing the orientation between the shaft and the inner wall due to considerations relating to the sealing between them.

Feature o) would result in an obvious manner from prolonging the inner wall of the basement duct portion in the way disclosed in claim 9 of E4.

Auxiliary request 1a - Article 56 EPC

Feature p) did not provide the effect of smoothening the process air flow alleged by the respondent over the whole claimed range, since it was very general and encompassed many embodiments which would not provide any improvement of the air flow, on the contrary, it included arrangements possibly leading to worse air flow. The objective problem was thus simply to provide an alternative outer wall.

Claim 9 and paragraph [0015] of E4 provided a hint to make the whole duct without angles and thus arrive at an embodiment falling within the scope of claim 1.

Therefore, a person skilled in the art would have modified the outer profile of the basement duct portion by adopting a smooth curve, without involving an inventive step, to achieve feature p) of independent claim 1.

Auxiliary requests 2 to 4 - admittance

Auxiliary requests 2 to 4 were late-filed and should not be admitted into the proceedings.

Reasons for the Decision

1. Auxiliary request 1 - Article 56 EPC

1.1 Starting from the laundry dryer embodiment of Figure 4 of E4, it was only contested between the parties whether the laundry dryer disclosed the following features:

m) a tangent (T1, T2, T3) to said inner curve (28b) of said basement duct portion (28) in said second longitudinal half (24 second half) of said basement (24) forms an angle different from 90° with an axis (H1) formed by sectioning said first plane (P1) with said sectioning plane (PT) for at least between 90% and 100% of the length (L2) of the inner curve (28b) in said second longitudinal half (24 second half);

n) the laundry dryer (1) including a motor (50) defining a motor axis (M), apt to rotate said drum (3), said motor axis (M) being parallel to said first plane (P1).

1.2 It was not contested that the laundry dryer of Figure 4 of E4 did not disclose the feature:

"o) wherein said motor includes a motor shaft (51) defining said motor axis (M), said shaft (51) passing through said duct walls (28w), and a tangent (T) in a point (P) where said motor axis (M) intersects said inner curve (28b) forms an angle different from 90° with said motor axis (M)."

Indeed, the embodiment of Figure 4 of E4 does not disclose a shaft passing through duct walls (plural), and the tangent to the inner curve forms an angle of 90 degrees with the motor axis.

1.3 The respondent argued that feature m) was not disclosed in E4. Feature j) defined that the air duct portion necessarily extended *from* a process air exit to a process air outlet. This interpretation was also supported by paragraph [0033] of the description. According to the respondent, the inner curve of the air duct portion in Figure 4 of E4 therefore necessarily comprised the straight portion from which the shaft of the fan 20 protruded. This straight portion in Figure 4 of E4 formed an angle of 90° with the axis formed by sectioning the first plane (perpendicular to the basement plane and passing through the drum axis) with a sectioning plane (parallel to the basement plane) for more than 10% of the length of the inner curve in the second longitudinal half (of the basement). Also paragraph [0022] of E4 disclosed that the fan 20 of Figure 4 was arranged at the end of the air duct 24.

1.3.1 The Board does not find this argument persuasive. Feature j) defines merely that a "duct portion" of the air duct (and thus not necessarily the whole air duct) channels process air *between* a process air exit (28in) where process air exits from said first heat exchanger (31) and a process air outlet (19) where process air exits said basement (24). Furthermore, the expression "channelling *between* a process air exit [...] and a process air outlet" implies a flow direction towards the outlet but does not imply that the duct portion must extend all the way to the outlet.

Nor is paragraph [0033] of the description of the published patent in contradiction with this interpretation either, since the expression "to channel process air from... to the outside of the basement" is not more restrictive since it also refers to a portion of the basement air duct and does not specify anything about the arrangement of the end of the basement air duct and the outlet.

The straight wall portion from which the shaft of the fan 20 protrudes in Figure 4 of E4 therefore does not need to be part of the air duct portion defined in features j) and m).

- 1.3.2 Paragraph [0022] of the description of E4 is also not in contradiction with this interpretation, since the expression "The fan is arranged at the end of the air duct" does not imply any physical arrangement between the duct and the fan, other than locating the fan downstream of the duct. The skilled person would also consider the fan 20 in Figure 4 to be located downstream and thus after the air duct 24, even if this duct does not include the straight wall from which the fan shaft protrudes.
- 1.3.3 Without this straight portion, the inner curve of the basement duct portion in the second longitudinal half of said basement forms an angle different from 90° with an axis formed by sectioning the first (perpendicular to the basement plane and passing through the drum axis) with a sectioning plane (parallel to the basement plane) for 100% of the length of the inner curve in the second longitudinal half of the basement. Feature m) is therefore disclosed in E4.

1.4 As regards feature n), the respondent argued that although E4 disclosed a shaft, nothing was explicitly disclosed in E4 about a drum, such that it could not be concluded that the shaft was apt to rotate a drum as defined in claim 1. The expression "apt to rotate" was allegedly to be understood in the same way as "configured to rotate".

The Board does not find this argument persuasive. It is not disputed that Figure 4 of E4 discloses a shaft protruding from the side of the motor 22 opposite to the fan 22. The Board finds that this shaft must be used to transmit power through a drive means (such as a belt or a chain) to e.g. rotate another moving component of the laundry drier disclosed in E4.

Although a drum is not shown in Figure 4, it is shown in Figure 5 of E4, which is part of the same embodiment, such that there is a disclosure of a drum in E4. Whilst it is true that a mechanical connection between the motor and the drum is not shown and the drum could be driven by another motor, the Board finds that the motor is however *apt to drive* the drum as defined in feature n) of claim 1.

This aptitude to drive does not require the explicit disclosure of a connection between the drum and the shaft. Such aptitude for a motor to drive both the drum and the fan is also shown in, for example, paragraph [0028] and Figure 1 of E8, paragraph [0027] and Figure 4 of E1 or paragraph [0003] of E3, where it is described in a configuration of a conventional drier.

The provision of the motor 22 with a driving shaft notably on the opposite side of the shaft that drives the fan 20 in Figure 4 of E4 also amounts to a motor

configured to rotate the drum, such that the Board cannot anyway see any difference in interpretation between the expressions "motor apt to rotate a drum" and "motor configured to rotate a drum".

1.5 The respondent also argued that the shaft shown in Figure 4 of E4 did not have any guiding surface, pulley or toothed wheel to drive a belt or a chain, such that the skilled person would not recognize it as being apt to rotate a drum, but the Board is not persuaded by this argument either, noting that the shaft in Figure 4 of E4 has a circumferential channel which the skilled person would recognize as being suitable to guide a belt while driving it.

1.6 The Board thus finds that feature n) is implicitly disclosed in Figure 4 of E4.

For completeness, it may be stated that even if this feature were considered not to be implicitly disclosed, the skilled person starting from the laundry drier of Figure 4 of E4 and looking for a way to drive the drum, would drive it with the motor 22 which also drives the fan, without involving an inventive step, since this is a common configuration in the prior art (see e.g. paragraph [0028] of E8, paragraph [0027] and Figure 4 of E1, or paragraph [0003] of E3, describing it in a configuration of a conventional drier).

1.7 Regarding feature o), the respondent argued that it provided the technical effect of reducing turbulence of the process air flow at the point of the conduit where the motor shaft crosses the second wall of the air conduit, thereby reducing pressure drops in the air conduit.

The Board does not concur. Feature o) defines that the tangent to the inner curve forms an angle other than 90 degrees with the motor axis. Such a wide range of angles between the tangent to the inner curve and the motor axis does not necessarily reduce turbulence nor flow of process air. The effect on the air flow of having an axis that is simply not perpendicular to the curve is unpredictable, and any benefit (if at all present) would depend on many parameters, such as the specific angle, flow speed, rotation speed and shape of the curvature. In addition, extending the inner curve up to the passage of the shaft implies that the inner curve extends until the outlet and therefore does not exclude the presence of angles or corners after the passage of the shaft through the inner wall.

In a similar way, the effect of the motor axis passing through more than one wall on turbulence and the flow of process air is unpredictable and depends on the specific duct configuration.

- 1.8 Feature o) therefore does not provide a technical effect such that the Board concludes that the objective technical problem in regard to this feature is to provide an alternative way of arranging the shaft.

- 1.9 Changing the angle between the inner curve and the motor axis such that the tangent to the inner curve forms an angle other than 90 degrees with the motor axis however has no effect (it may even be disadvantageous to the flow of air as mentioned above) and is simply a design choice according to the circumstances for the skilled person seeking an alternative way of arranging the shaft.

1.10 The respondent also argued that it would not be obvious to the skilled person to change the angle because this would create difficulties in sealing the gap between the shaft and the inner curve (for example, if the inner wall were to be inclined) but the Board does not accept this. Neither claim 1 of this request (or the patent itself) nor E4 is directed to anything relating to a sealing arrangement between the wall and the shaft, or to such a technical topic at all, such that the Board cannot see this as a consideration that the skilled person would take into account when considering the teaching of E4.

Quite the contrary, if the inner wall were to be modified, this would not prompt the skilled person to change the position of the motor and of the axis to maintain an angle of 90 degrees to the wall, as this would require a different arrangement of the components of the dryer.

1.11 The passage of the shaft through more than one wall would be disadvantageous, since it would necessarily require more complicated duct designs which would foreseeably lead to less smooth process air flows than the one of E4 unless further steps were taken. An inventive step cannot be acknowledged on the basis of a foreseeable disadvantageous modification of the closest prior art which is not compensated by an unexpected technical advantage (see e.g. Case Law of the Boards of Appeal, 10th edition 2022, I.D.9.21.1).

1.12 The respondent argued that any reduction in airflow brought about by a more complicated duct design could be compensated by other factors, such as an increase in the suction power of the fan. However, any such compensation is not defined in the claim or even

described in the patent and the fact that a disadvantageous effect could, possibly but not necessarily, be mitigated or compensated by another possible design change is hence not something which can be taken into account when assessing inventive step.

- 1.13 For the reasons above, the subject-matter of claim 1 lacks an inventive step (Article 56 EPC). Consequently auxiliary request 1 is not allowable.

2. Auxiliary request 1a - Article 56 EPC
 - 2.1 Claim 1 of auxiliary request 1a differs from claim 1 of auxiliary request 1 in that the feature p), which reads as follows, has been added to claim 1:

p)"a tangent (Ta1, Ta2) to said outer curve (28a) of said basement duct portion (28) in said second longitudinal half (24 second half) of said basement (24) forms an angle different from 90° with an axis (H1) formed by sectioning said first plane (P1) with said sectioning plane (PT) for at least between 90% and 100% of the length (L2') of the outer curve (28a) in said second longitudinal half (24 second half)".
 - 2.2 It is not disputed that this feature is not disclosed in Figure 4 of E4, where the outer curve of the basement duct portion is arranged in the first longitudinal half and does not extend into the second longitudinal half.
 - 2.3 The respondent argued that extending the outer curve into the second longitudinal half would improve the flow of the process air since it would make the outer curve and the surface up to the outlet smoother, as

could allegedly be derived from paragraphs [0012] and [0041] of the patent.

- 2.4 However, this argument is not persuasive. Paragraphs [0012] and [0041] of the description describe an "improvement" in the flow of process air and in the efficiency of the heat pump but do not explain how the comparative dryer's duct is shaped. What the technical reason for the improvement is cannot therefore be established, let alone in comparison to the closest prior art E4. In addition, paragraph [0012] attributes the improvement to a curved portion having a "specific shape" and paragraph [0041] attributes the improvement to "such a basement duct portion", i.e. a specifically shaped complete basement duct as described in the preceding paragraphs. None of these passages specifically attributes an improvement in the flow of process air and in the efficiency of the heat pump to feature p).

Quite the contrary, the Board finds that making a major yet unspecified part of the outer wall somehow curved in the second longitudinal half of the basement curved would not necessarily make the outer curve smoother and thus provide any effect over the whole range claimed, i.e. any improvement would only arise in a very limited number of possible embodiments encompassed by this feature. As there is no particular effect necessarily associated with feature p), this feature cannot have any synergy with the other differing feature o).

- 2.5 The objective problem is thus to provide an alternative shape to the outer curve.
- 2.6 The respondent argued that the shape of Figure 4 already provided for a smooth flow with few

discontinuities (as also described in paragraphs [0009] and [0015]), such that there was no motivation for the skilled person to adapt the outer curve to a shape as defined in feature p). Further, it would also not be the obvious approach to provide such long-range arcs, which sacrifice inner space, and go against basic design rules as disclosed, for example, in Figure 4 of E4.

This argument is, however, not persuasive. Rather, the skilled person starting from the embodiment of Figure 4 and trying to find an alternative shape would already start from the concept stated in paragraph [0015] of E4 that the curved portions of the air duct should extend substantially over the whole air duct in the basement. Since even the teaching of E4 includes making curved portions as long as possible, the Board does not see how these go against conventional wisdom and basic design rules, as argued by the respondent.

- 2.7 The Board finds that it would therefore indeed be obvious for the skilled person trying to provide an alternative shape to the outer curve so as to extend the outer curved portion in the direction of the outlet into the second longitudinal half of the basement (albeit not necessarily as far as the outlet) and arrive at an outer curve as defined in feature p).
- 2.8 For the reasons above and leaving aside the question of the admittance of auxiliary request 1a into the proceedings, the subject-matter of its claim 1 lacks an inventive step (Article 56 EPC). Consequently auxiliary request 1a is not allowable.

3. Auxiliary requests 2 to 4 - admittance

3.1 Auxiliary requests 1, 1a and 2 to 4 were filed in that order with the grounds of appeal of the proprietor on 1 June 2020. Auxiliary request 1a was filed for the first time with the grounds of appeal such that there was an amendment to the proprietor's case compared to that which it had made before the opposition division.

3.2 According to Article 12(4) RPBA 2020, any part of a party's appeal case which does not meet the requirements in paragraph 2 (i.e. not directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based) is to be regarded as an amendment, unless the party demonstrates that this part was admissibly raised and maintained in the proceedings leading to the decision under appeal. Any such amendment may be admitted only at the discretion of the Board.

The party shall clearly identify each amendment and provide reasons for submitting it in the appeal proceedings. In the case of an amendment to a patent application or patent, the party shall also indicate the basis for the amendment in the application as filed and provide reasons why the amendment overcomes the objections raised.

The Board shall exercise its discretion in view of, *inter alia*, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy.

3.3 In its preliminary opinion (see points 9.2, 10 and 11.1), the Board stated that auxiliary requests 2, 3

and 4 contained a number of further independent claims which were not convergent with those of e.g. auxiliary request 1a. The Board also added that this was clearly contrary to the principle of procedural economy and stated that it tended towards not admitting these requests into the proceedings.

3.4 Following this opinion, the proprietor did not make any further comments on the issue of admittance of auxiliary requests 2 to 4, such that the Board sees no reason to change its opinion, which is hereby confirmed.

3.5 The Board consequently exercised its discretion pursuant to Article 12(4) RPBA 2020 not to admit auxiliary requests 2, 3 and 4 into the proceedings.

3.6 Absent any set of claims complying with 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:



D. Grundner

M. Harrison

Decision electronically authenticated