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**Datasheet for the decision
of 25 May 2023**

Case Number: T 0763/20 - 3.2.03

Application Number: 08425192.5

Publication Number: 1995525

IPC: F24C15/32

Language of the proceedings: EN

Title of invention:

A baking oven

Patent Proprietor:

Whirlpool EMEA S.p.A.

Opponent:

Electrolux Rothenburg GmbH Factory and Development

Relevant legal provisions:

EPC Art. 123(2), 70(2), 83, 54, 56

Keyword:

Amendments - extension beyond the content of the application
as filed (no)

Sufficiency of disclosure - (yes)

Novelty - (yes)

Inventive step - (yes)



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0763/20 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 25 May 2023

Appellant: Electrolux Rothenburg GmbH Factory and
(Opponent) Development
Fürther Strasse 246
90429 Nürnberg (DE)

Representative: Schröer, Gernot H.
Meissner Bolte Patentanwälte
Rechtsanwälte Partnerschaft mbB
Bankgasse 3
90402 Nürnberg (DE)

Respondent: Whirlpool EMEA S.p.A.
(Patent Proprietor) Via Carlo Pisacane n° 1
20016 Pero (MI) (IT)

Representative: Spina, Alessandro
Whirlpool Management EMEA S.R.L.
Via Carlo Pisacane, 1
20016 Pero (MI) (IT)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 23 January 2020
rejecting the opposition filed against European
patent No. 1995525 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman C. Herberhold
Members: B. Miller
F. Bostedt

Summary of Facts and Submissions

I. European patent No. 1 995 525 B1 ("the patent") relates to a baking oven.

II. An opposition against the patent was filed on the grounds for opposition under Article 100(b) and (c) EPC and Article 100(a) EPC together with Articles 54 and 56 EPC.

The opposition division concluded that none of the grounds for opposition prejudiced the maintenance of the patent and rejected the opposition.

III. This decision was appealed by the opponent ("the appellant").

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

IV. The patent proprietor ("the respondent") requested that the appeal be dismissed and that the patent be maintained as granted. In the alternative, it requested that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 5 submitted with the letter of reply to the statement setting out the grounds of appeal.

V. Cited prior art

(a) The following documents, which were already cited during the opposition proceedings, are of particular importance for the present decision:

E1: DE 44 01 642 A1

E2: EP 1 741 988 A1

E3: EP 1 739 358 A1

E4: DE 1 98 43 842 A1

E5: WO 01/23809 A2

E11: EP 1 041 346 A2

- VI. With a letter dated 8 May 2023 the appellant supplemented its arguments in preparation for the oral proceedings.
- VII. With a letter dated 24 May 2023 the respondent presented further arguments together with the following documents:
- V1: human translation of paragraph [0036] of the document WO 2005/106333 A1
 - V2: collection of definitions and translations into Italian of the English verb "to bake"
 - V3: highlighted text of the A1 publication of the application on which the patent is based
- VIII. Oral proceedings were held on 25 May 2023 by videoconference.
- IX. Claim 1 of the patent according to the main request, including feature numbering as used by the parties, reads as follows:
- 1a) A baking oven comprising:
 - 1b) a baking cavity (2) accessible by the user and suitable to receive the foods to be baked;
 - 1c) heating means (3) in thermal contact with the cavity (2);
 - 1d) a reservoir (4) for containing water which identifies a first portion (41) of the cavity (2) and comprises an opening (40) at least partially oriented upwards which serves as interface with a remaining second portion (42) of the cavity (2) external to the reservoir (4),

- 1e) the water contained in the reservoir (4) evaporating under the action of the heating means (3);
 - 1f) said opening (40) constituting both an inlet for the water to flow into the reservoir (4) and an outlet for the steam from the reservoir (4);
 - 1g) delimiting walls (20), distinct from the reservoir (4), which define at least in part the cavity (2);
 - 1h) a tubular conduit (50) for the outflow of the water connectable fluid-dynamically to means for supplying the water and having an outlet section (51) internal to the cavity (2), the water flowing out of the tubular conduit (50) subsequently flowing into the reservoir (4);
 - 1i) a shut-off element (5) operatively connected to the tubular conduit (50) to enable or inhibit the flow of water along the tubular conduit (50);
- characterised in that
- 1j) to facilitate cleaning operations on the reservoir (4) performed manually by an operator, the outlet section (51) of the tubular conduit (50) is external to the volume generated by a translation of the opening (40) along the physical vertical,
 - 1k) said opening (40) remaining parallel to itself during said translation;
 - 1l) the oven comprising means (53) for conveying the water from said outlet section (51) of the tubular conduit (50) to the reservoir (4);
 - 1m) a portion of the delimiting walls (20) comprising the means (53) for conveying the water;
 - 1n) said conveying means (53) being exterior to said volume generated by the translation of the opening (40) along the physical vertical, said

opening (40) remaining parallel to itself during said translation.

Auxiliary requests 1 to 5 play no role in this decision.

X. The appellant's arguments, insofar as they are relevant for this decision, can be summarised as follows.

(a) Article 100(b) EPC

The feature "the oven comprising means (53) for conveying the water from said outlet section (51) of the tubular conduit (50) to the reservoir (4)" in claim 1 did not define where the means ended and where the reservoir began. In the absence of structural definitions, the skilled person could not determine how the vaguely defined means for conveying the water and the reservoir were to be reduced to practice.

The requirement in claim 1 that "the delimiting walls 20 (being) distinct from the reservoir 4" was contradictory to the embodiment described in paragraph [0034] and claim 3 of the patent, according to which the delimiting walls and the reservoir were made "in a single body". The skilled person did not know how delimiting walls could be distinct from the reservoir but at the same time be made in a single body with said delimiting walls.

The "bump" visible in figure 4 in the lower wall of the cavity of the baking oven between the water outlet section and the reservoir cast doubt on what the water conveying means could be.

(b) Article 100(c) EPC

The introduction of the feature "the oven comprising means (53) for conveying the water ..." constituted an intermediate generalisation because it was disclosed in paragraph [0035] of the application as published only in the context of the first embodiment.

The feature added to claim 1 was intrinsically linked to the further features described in the context of the first embodiment.

The patent extended beyond the teaching of the application as filed in Italian, since the application referred to a "forno di cottura" in general and not to a baking oven according to claim 1 as granted. This argument was supported by the English translation of the application as filed, i.e. the application as published, in which reference was also made to a "cooking oven". Hence the application as filed in Italian could not support the amendment to claim 1.

(c) Admittance of the submission by the respondent
dated 24 May 2023

The submission dated 24 May 2023 together with documents V1 to V3 had been filed after the summons to attend oral proceedings was received without cogent reasons and was not to be admitted into the proceedings.

(d) Article 100(a) EPC in conjunction with
Article 54 EPC

E1 and E4 disclosed a cooking device comprising all the features according to claim 1. A baking device according to claim 1 of the patent could not be

distinguished from a steam cooking device as disclosed in E1 and E4.

E2 disclosed, in figures 1 to 3 and paragraph [0036], a baking oven according to claim 1 of the patent. The pool recessed portion 35a of the evaporation dish 35 in E2 corresponded to the reservoir as defined in claim 1. The rounded end of the evaporation dish 35 corresponded to the means for conveying water as defined in claim 1.

E3 disclosed a baking oven in figure 1. The evaporation dish of the oven in E3 comprised a surrounding rim that corresponded to the means for conveying water as defined in claim 1; see figure 3 of E3. The remaining features of claim 1 were uncontestedly disclosed in E3.

(e) Article 100(a) EPC in conjunction with
Article 56 EPC

- Starting from E1 or E4 in combination with E2, E5
or common general knowledge

The subject-matter of claim 1 differed from the cooking device in E1 and E4 in that the device was a baking oven.

The problem to be solved could be formulated as that of expanding the usability of the device. Providing the functionality of a baking oven in the device in E1 or E4 was obvious when considering E2, E5 or common general knowledge.

- Starting from E2 in combination with E4 or common general knowledge

The subject-matter of claim 1 differed from the cooking device in E2 on account of features 1l to 1n.

The problem to be solved could be formulated as that of delimiting the reservoir appropriately to control the heating more precisely.

The solution to this problem, as defined in claim 1, was obvious when considering E4 and/or common general knowledge.

- Starting from E3 in combination with E4 or common general knowledge

The subject-matter of claim 1 was likewise obvious when starting from E3, since the skilled person would have implemented the evaporation dish in figure 3 in the device according to figure 1 of E3 as part of a routine modification. Moreover, E4 prompted the skilled person to modify the relative arrangement of the evaporation dish and the water inlet in the oven according to E3.

XI. The respondent's arguments with regard to each of the above points can be summarised as follows.

(a) Article 100(b) EPC

The patent described the reservoir and its function in paragraphs [0021], [0022] and [0031].

The skilled person could determine, at least from the figures of the patent, how the means for conveying the water and the reservoir could be implemented in a baking oven.

The requirement in claim 1 that "the delimiting walls 20 (being) distinct from the reservoir 4" was not contradictory to the embodiment described in paragraph [0034] and claim 3, according to which the delimiting walls and the reservoir were made "in a single body".

(b) Article 100(c) EPC

The introduction of the feature "the oven comprising means (53) for conveying the water ..." was based on the disclosure in paragraph [0035] of the application as published on page 10, lines 12 to 19 of the application as originally filed in Italian.

The Italian application referred to a "forno di cottura", which had to be translated as baking oven. The application as filed in Italian therefore supported the amendment to claim 1.

(c) Admittance of the submission dated 24 May 2023

The submission dated 24 May 2023 together with documents V1 to V3 had been filed in order to supplement the previously presented arguments that "forno di cottura" meant baking oven.

(d) Article 100(a) EPC in conjunction with
Article 54 EPC

E1 and E4 disclosed steam cooking devices, and not a baking oven according to claim 1 of the patent.

E2 disclosed, in figures 1 to 3 and paragraph [0036], a baking oven comprising an evaporation dish. The rounded ends of the evaporation dishes were a part of the reservoir formed by the evaporation dish.

Therefore, the subject-matter of claim 1 differed from the disclosure in E2 in that the baking oven comprised

- 1j) an outlet section of the tubular conduit that was external to the volume generated by a translation of the opening along the physical vertical;
- 1l) means for conveying the water from said outlet section of the tubular conduit to the reservoir;
- 1m) a portion of the delimiting walls that comprised the means for conveying the water;
- 1n) wherein said conveying means were exterior to said volume.

Figure 1 of E3 disclosed a baking oven in which the water could splash directly from the water outlet into the evaporation dish.

The subject-matter of claim 1 differed from E3 in that the baking oven comprised means for conveying the water from said outlet section of the tubular conduit to the reservoir (feature 1l).

(e) Article 100(a) EPC in conjunction with Article 56 EPC

- Starting from E1 or E4 in combination with E2, E5 or common general knowledge

E1 related to a steam cooking device and therefore was not an appropriate starting point for the development of a baking oven. The same applied to E4.

- Starting from E2 in combination with E4 or common general knowledge

The subject-matter of claim 1 differed from the disclosure in E2 on account of features 1j to 1n. None of the further cited documents disclosed a baking oven with an arrangement of a reservoir, a water outlet and a means for conveying the water as required by claim 1. Hence, the subject-matter of claim 1 was not rendered obvious by the available prior art.

- Starting from E3 in combination with E4 or common general knowledge

E3 on its own did not provide any incentive to combine the embodiments according to figures 1 and 3 of E3. The arguments presented by the appellant were based on hindsight and speculation. Moreover, there was nothing in E3 that indicated that the surrounding rim of the evaporation dish according to figure 3 could be used as a means for conveying water. E4 would not have been considered by the skilled person when starting from E3, since E4 addressed a steam cooking device and not a baking oven.

Reasons for the Decision

1. Article 100(b) EPC

1.1 For an objection of lack of sufficiency of disclosure to be successful, there must be serious doubts, substantiated by verifiable facts (Case Law of the Boards of Appeal, 10th edition, 2022, Chapter II.C.9.). The mere fact that a claim is defined by functional and broad features is no reason to assume that the patent does not fulfil the requirement of sufficient disclosure.

1.2 The appellant's objections address the clarity of the term "reservoir" and of the expression "means for conveying water" used in claim 1; however, the requirement of clarity is not a ground for opposition.

1.3 The appellant argues that the skilled person would be left in doubt as to what the water conveying means addressed in claim 1 could be, since a "bump" is visible at the lower wall between the tubular conduit 51 for the outflow of water and the reservoir 4 in figure 4 of the patent.

However, the "bump" visible in the side view of figure 4 belongs to the temperature sensor 302 in the background of the reservoir 4 as shown in figure 3. The skilled person interpreting the technical figures showing a section through a device in a technically appropriate manner and with a mind willing to understand is not left with any doubt concerning the nature of the "bump".

1.4 Although claim 1 and the patent as a whole do not structurally define what is meant by the term "reservoir" and the expression "means for conveying water", the skilled person reading the patent has no difficulty in understanding their meaning.

1.5 Furthermore, it is clear from the teaching of the patent and in particular from the embodiments shown in its figures that the reservoir is distinct from the delimiting side walls of the cavity and that the reservoir can be formed integrally or non-integrally with the bottom wall of the cavity of the baking oven.

The Board can see no reason why the skilled person would be unable to reproduce an oven as illustrated by the figures of the patent.

1.6 The Board therefore concludes, in line with the reasoning in the contested decision in point II.1., that the ground for opposition pursuant to Article 100(b) EPC does not prejudice the maintenance of the patent as granted.

2. Article 100(c) EPC

2.1 Claim 1 of the patent according to the main request is based on claim 1 as originally filed to which, *inter alia*, feature (11) "the oven comprising means (53) for conveying the water from said outlet section (51) of the tubular conduit (50) to the reservoir (4)" has been added.

This feature is disclosed in paragraph [0035] of the application as published (EP 1 995 525 A1) (emphasis added):

"Advantageously, the oven comprises means 53 for conveying the water from said outlet section of the tubular conduit 50 to the reservoir 4, said conveying means 53 being external to the volume generated by the translation of the opening 40 along the physical vertical, said opening 40 remaining parallel to itself during said translation. **Advantageously, a portion of the delimiting walls 20 comprises the means 53 for conveying the water.** A particular embodiment of the conveying means 53 shall be made more readily apparent hereafter."

2.2 The advantageous use of the means 53 according to paragraph [0035] of the application as published is not inextricably linked to the other features of the first embodiment previously described in paragraph [0035], such as the tubular conduit 50, the reservoir 4, the opening 40 as well as the delimiting walls 20. Instead, the penultimate sentence describes the advantageous use in general terms and without any reference or functional link to the other features of the first embodiment.

This interpretation of the application as published is confirmed by the disclosure in the application as originally filed in Italian. The relevant disclosure on page 10, lines 12 to 19 of the application as filed in Italian forms an independent paragraph which is not linked to the previous paragraphs (which is different from the A1 publication).

Hence, incorporating the feature disclosed on page 10, lines 12 to 19 of the application as originally filed in Italian does not create an intermediate generalisation, contrary to the appellant's argument.

The amendment to claim 1 is therefore based directly and unambiguously on the disclosure of the application as filed in Italian, as required according to Articles 123(2) and 70(2) EPC.

- 2.3 The Board further observes that the application as filed in Italian consistently refers to a "forno di cottura", which means "baking oven" in the Italian language, as argued by the respondent. This argument by the respondent is supported by the official translation of the priority document.

Moreover, it is also supported by the methods of "cooking" disclosed in paragraph [0043] of the application as published, which for example refers to "baking of foods (such as pizza)".

- 2.4 Therefore, in line with the reasoning in the contested decision in point II.2, the Board concludes that the ground for opposition pursuant to Article 100(c) EPC does not prejudice the maintenance of the patent as granted.

3. Admittance of the submission dated 24 May 2023

Documents V1 to V3 and the arguments based on them had been filed after the summons to attend oral proceedings was received, with a letter dated 24 May 2023. They relate to the question of whether the expression "forno di cottura" in the application as filed in Italian supports the wording of claim 1.

Since the above conclusion on the ground of opposition according to Article 100(c) EPC was reached without the need to consult the late-filed submission and V1 to V3

as filed with it, a decision on their admittance is not needed in this case.

4. Novelty with regard to E1 and E4
(Article 100(a) in conjunction with Article 54 EPC)

- 4.1 E1 and E4 both disclose a steam cooking oven.

A steam cooking oven is not the same as a baking oven as defined in claim 1 of the patent.

Steam cooking is limited to 100°C (normal pressure) and does not result in browning of the food but leaves the surface of the cooked food with a moist, soft surface.

In contrast to this, baking achieves browning and results in the formation of a crust on the surface of the baked food. Hence, a baking oven has to be suitable for achieving a Maillard reaction on the surface of the food, which typically proceeds from around 140 to 165°C. This is not the case for a steam cooking oven.

E1 and E4 do not disclose that the steam cooking oven can be heated to such an extent that the oven is suitable as a baking oven, i.e. is suitable for achieving a temperature required for a baking process.

- 4.2 It is true that E4 discloses, in column 4, lines 7 to 11, that the side walls and the bottom wall of the steam cooking oven can be heated to minimise condensation:

"Vorteilhaft ist es, für den Heizkörper (8) zur Kondensatminimierung eine kleine Leistung zu wählen, am Garraumboden (5) beispielsweise 120 W und evtl.

zusätzlich ca. 50 W Heizkörper an mindestens zwei weiteren Garraumwänden (4.1, 4.2)".

However, heating elements which are adapted to avoid condensation are neither foreseen nor suitable for heating the oven to the temperatures required for baking. This is also confirmed by the low power (120 W, 50 W) disclosed in E4 in this context, which is far lower than the power usually consumed by a baking oven (more than 1 kW). Hence, E4 also does not contain any additional disclosure which could imply that the steam cooking oven could be used at temperatures higher than 100°C, contrary to the conventional understanding that the skilled person has of a steam cooking oven.

- 4.3 The appellant further argues that the steam cooking oven in E4 could be used for baking when used without water.

E4 does not provide any disclosure that the steam cooking oven could be used without water and that, in such a hypothetical use, the heating elements would be sufficient to achieve the temperatures which are usually required for baking. Hence, the appellant's argument is based on mere speculation and hypothetical assumptions that are not supported by the disclosure of E4.

Therefore, the appellant's argument is not convincing.

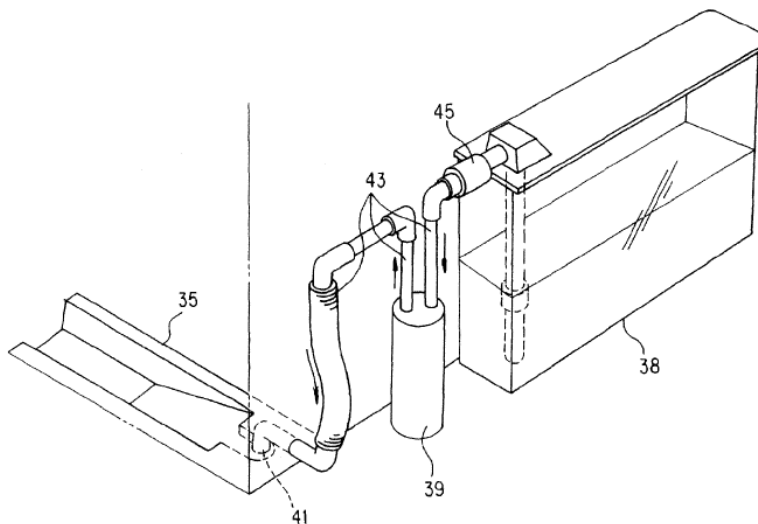
- 4.4 The Board therefore agrees with the reasoning in the contested decision in point II.3.1.3 and concludes that the subject-matter of claim 1 is novel over E1 and E4.

5. Novelty with regard to E2
(Article 100(a) in conjunction with Article 54 EPC)

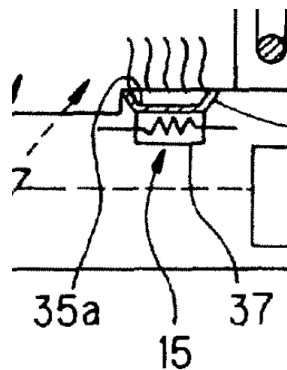
5.1 Disclosure of E2

E2 discloses a baking oven with a water evaporation system. The water evaporation system in E2 comprises a tubular water inlet 41, from which water can flow directly into the evaporation dish 35 at its rounded end part below the tubular water inlet 41; see figure 3:

FIG. 3



The evaporation dish 35 comprises a pool recessed portion 35a above the heating element 37; see paragraph [0036] and the following excerpt of figure 2 of E2:



5.2 In a first line of argument, the appellant argues that the pool recessed portion 35a can be considered as the reservoir according to claim 1, since in this part of the evaporation dish the evaporation of water takes place (see paragraph [0036] of E2). The rounded end of the evaporation dish below the water tube 41 ("water inlet part") serves as a means for conveying the water to the reservoir.

This argument is not convincing.

5.2.1 Claim 1 refers to a cavity formed by delimiting walls (bottom, top and side walls of the oven). The cavity comprises two parts: a first part which is formed by a reservoir (4) and a second part which is formed by the remaining baking cavity (2) external to the reservoir (4).

According to the established case law, the skilled person should try, with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation of the claim which is technically sensible and takes into account the whole disclosure of the patent. The patent must be construed by a mind willing to understand, not a mind desirous of misunderstanding; see Case Law of the Boards of Appeal, 10th edition, 2022, Chapter II.A.6.1.

Although the reservoir in claim 1 is not further defined by structural features, it is nevertheless defined by its function of containing water (feature 1d). A reservoir in the sense of claim 1 is therefore formed by a confined volume which can contain water. In E2, such a reservoir is formed by the evaporation dish 35 and hence includes the rounded end of the

evaporation dish below the water tube 41, "water inlet part". Figure 1 of E2 is in accordance with this interpretation, showing the "reservoir" as a distinct part within the cavity.

- 5.2.2 The appellant's proposed virtual separation of the volume confined by the evaporation dish into a "reservoir portion" and a further portion which acts as a means for conveying the water constitutes an artificial interpretation of E2 and a misinterpretation of the term "reservoir" in claim 1 of the patent. A reservoir in the sense of claim 1 encompasses the whole volume that is suitable for containing water and is separate from the baking cavity, i.e. from the volume which is available for baking by using a baking tray.

The Board therefore agrees with the respondent's interpretation that the whole evaporation dish in E2 (including the rounded end portion of the evaporation dish below the water tube 41, "water inlet part") forms the reservoir in the sense of claim 1 of the patent.

- 5.2.3 Even when following the appellant's interpretation that only the pool recessed portion 35a in E2 can be considered as the reservoir, the features of claim 1 of the patent are still not fulfilled by the baking device in E2.

Considering the appellant's interpretation, the water flows into such a "reservoir portion" of the evaporation dish 35 through a vertical plane, i.e. a sidewardly oriented opening which separates the volume above the recessed portion 35a from the volume of the remaining evaporation dish 35.

However, the opening of the reservoir is defined in claim 1 of the patent

- to be at least partially oriented upwards,
- to serve as interface with a remaining second portion of the cavity external to the reservoir and
- to constitute "both an inlet for the water to flow into the reservoir (4) and an outlet for the steam from the reservoir (4)".

For the reservoir defined according to the appellant's interpretation, the water does not flow through the upwardly oriented opening of the "reservoir portion" of the evaporation dish in E2, contrary to the requirement of claim 1.

5.3 In a second line of argument, the appellant argues that the reservoir according to claim 1 corresponds to the whole recessed part of the evaporation dish 35 in E2, but without its rounded end part below the tubular water inlet 41 ("water inlet part"), which serves as a means for conveying the water to the reservoir.

With regard to this line of argument, the same considerations apply as for the first line of argument discussed above in point 5.2.

Artificial separation of the evaporation dish into different portions fulfilling different functions is not based on the disclosure of E2 and does not even lead to an embodiment falling within the scope of claim 1. Considering the appellant's interpretation, the water flows into the reservoir part of the evaporation dish through the vertical plane, i.e. the sidewardly oriented opening between the rounded end portion of the evaporation dish and the recessed

portion, contrary to the condition of claim 1 whereby the water has to flow through an upwardly oriented opening.

5.4 In a third line of argument the appellant argues that the reservoir is formed in the lower volume fraction of the evaporation dish 35, which ends at the edge formed between the rounded end portion of the evaporation dish below the water tube 41 and the main part of the evaporation dish 35 having a rectangular cross-section.

This argument is not convincing, either.

E2 does not disclose that it is foreseen that the evaporation dish 35 is only to be filled partially. In particular, E2 does not specify that the evaporation dish 35 is filled only to a level such that the water does not fill the volume generated by the two rounded end portions of the evaporation dish 35.

A corresponding disclosure also cannot be derived from the fact that water flows into the evaporation dish 35 at the rounded end portions below the water tube 41. E2 does not disclose a special function for the two rounded end portions. In particular, E2 does not disclose that one of the two end portions acts as a water conveying means and one of the two end portions has no function. The presence of the second rounded end portion that is opposite the rounded end below the water tube 41 instead implies that both rounded end portions have the same basic function of containing water and are a part of the reservoir.

5.5 Conclusion

The Board concludes, in line with the reasoning in the contested decision in point II.3.1.3, that the subject-matter of claim 1 differs from the disclosure in E2 in that the baking oven comprises

- an outlet section of the tubular conduit that is external to the volume generated by a translation of the opening of the reservoir along the physical vertical;
- means for conveying the water from said outlet section of the tubular conduit to the reservoir;
- a portion of the delimiting walls that comprises the means for conveying the water;
- said conveying means being exterior to said volume.

6. Novelty with regard to E3 (Article 100(a) in conjunction with Article 54 EPC)

6.1 E3 discloses, in figure 1, a baking oven comprising an evaporation dish 17 and a water inlet.

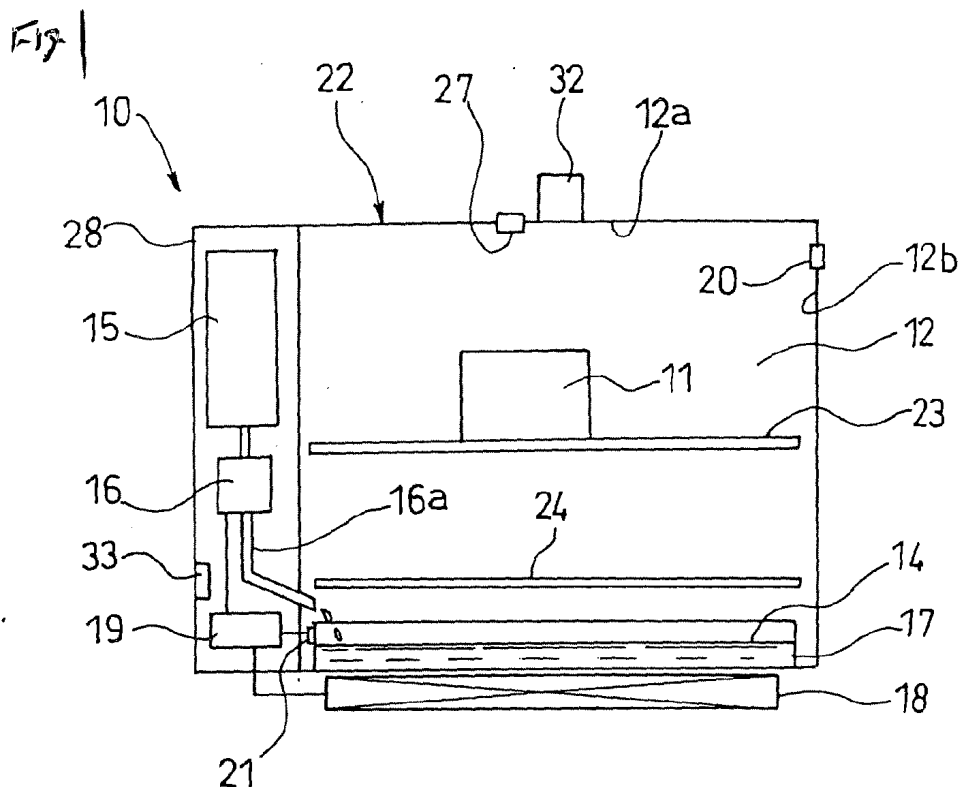


Figure 1 of E3 discloses that the water conduit 16a ends above the evaporation dish 17 and is placed to be offset at the side of the evaporation dish 17.

Figure 3 of E3 also shows, for another embodiment, that the evaporating dish 17 comprises an inner reservoir and a surrounding rim; however, neither the surrounding rim nor the inner reservoir is shown in figure 1.

6.2 The appellant argues that the surrounding rim can be considered as a "means for conveying water", since water flowing out from the water conduit 16a would fall onto the rim of the evaporation dish 17.

This argument is not convincing. It is based on mere speculation and even contradicts the disclosure in figure 1, in which the water is shown to splash directly into the reservoir of the evaporation dish 17.

6.3 Therefore, the Board concludes, in line with the reasoning in point II.3.1.3 of the contested decision, that the subject-matter of claim 1 is novel over E3.

7. Inventive step (Article 100(a) in conjunction with Article 56 EPC)

7.1 Starting from E2

7.1.1 E2 discloses a baking oven comprising an evaporation dish and relates to the same type of cooking equipment as addressed by the contested patent. Hence, it is an appropriate starting point for the assessment of inventive step.

Following on from point 5.5 above, the subject-matter of claim 1 differs from the disclosure in E2 in that the baking oven comprises

- an outlet section of the tubular conduit that is external to the volume generated by a translation of the opening of the reservoir along the physical vertical;
- means for conveying the water from said outlet section of the tubular conduit to the reservoir;
- a portion of the delimiting walls that comprises the means for conveying the water;
- said conveying means being exterior to said volume.

7.1.2 Based on the purpose stated in claim 1 of the patent, the objective technical problem could be formulated as that of providing a baking oven which is easier to clean after use.

7.1.3 None of the further documents E1 and E3 to E5 nor the common general knowledge suggests the claimed solution in the context of a baking oven.

E1 and E4 are documents which would not be considered by the skilled person because they do not relate to the same type of device as that in E2, i.e. a baking oven. Even if the skilled person considered the disclosure in relation to a steam cooking oven according to E1 or E4 for modifying the baking oven in E2, neither E1 nor E4 would prompt them to make the necessary structural changes in order to solve the underlying problem.

E3 does not disclose a means for conveying water within the meaning of claim 1 and thus cannot lead to the solution to the technical problem. Indeed, E3 discloses that the water splashes directly into the reservoir; see figure 1.

E5 relates to an oven for keeping heated food warm; see claim 1. Even if the skilled person considered this document when seeking to improve a baking oven, E5 would not disclose a water conveying means in the sense of claim 1. Like E3, E5 instead discloses that the water splashes directly into the reservoir; see figure 2.

7.2 Starting from E1 or E4

E1 and E4 relate to steam cooking devices, and therefore, do not have the same purpose as the patent, which can be considered to be providing a baking oven. Hence, E1 and E4 do not represent an appropriate starting point for the assessment of inventive step, since the skilled person would not consider them when seeking to provide a baking oven.

Even if the skilled person started from either E1 or E4, they would not completely change the nature of the cooking device and redesign it to be suitable as a baking oven, as the cited prior art gives them no motivation or incentive to do so.

Therefore, in line with the finding in point II.3.2.3 of the contested decision, the Board concludes that the subject-matter of claim 1 is not obvious when starting from E1 or E4.

7.3 Starting from E3

E3 discloses a baking oven in which the water conduit 16a ends above the evaporation dish 17 and is placed to be offset at the side of the evaporation dish 17.

The subject-matter of claim 1 differs from the baking oven in E3 in that the baking oven comprises means for conveying water from the water inlet to the evaporation dish.

Similarly to the arguments with regard to E2 as the starting point, the objective technical problem could be formulated as that of providing a baking oven which is easier to clean after use.

Figure 3 of E3 discloses a further embodiment in which the evaporating dish 17 comprises a surrounding rim; however, E3 does not disclose that the surrounding rim could be used in the embodiment according to Figure 1 and that, in addition, the surrounding rim could be used for conveying water from the water inlet to the evaporation dish in order to provide an oven that is easier to clean.

Therefore, the Board concludes that the subject-matter of claim 1 is not obvious when starting from E3.

As already indicated above, E4 would not be considered by the skilled person when starting from E3 because it does not relate to the same type of device as E3, i.e. a baking oven. Even if the skilled person considered the disclosure in relation to a steam cooking oven according to E4 for modifying a baking oven in E3, E4 would not prompt them to make the necessary structural changes in order to solve the underlying problem.

8. It follows from the above that the opponent's appeal is not successful.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Spira

C. Herberhold

Decision electronically authenticated