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**Datasheet for the decision
of 26 November 2024**

Case Number: T 2662/22 - 3.2.04

Application Number: 14727001.1

Publication Number: 3004760

IPC: F25D23/06, F25D29/00

Language of the proceedings: EN

Title of invention:

A HOUSEHOLD APPLIANCE WITH AN IMPROVED FIRE SAFETY

Patent Proprietor:

Arçelik Anonim Sirketi

Opponent:

Vestel Beyaz Eşya Sanayi ve Ticaret A.S.

Headword:

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 2662/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 26 November 2024

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 November 2022
rejecting the opposition filed against European
patent No. 3004760 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman J. Wright
Members: C. Kujat
C. Heath

Summary of Facts and Submissions

I. The appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition filed against the patent in suit.

The opposition division decided that the subject-matter of the claims as granted was novel and involved an inventive step.

II. In preparation for oral proceedings, the Board issued a communication setting out its preliminary opinion on the relevant issues. Oral proceedings before the Board were held on 26 November 2024.

III. The appellant requests that the decision under appeal be set aside and the patent be revoked and that the appeal fee be reimbursed.

The respondent (patent proprietor) requests that the appeal be dismissed, in the auxiliary that the patent be upheld based on one of Auxiliary Requests 1 - 27, all filed or re-filed with the reply to the grounds of appeal.

IV. Claim 1 of the main request, with feature references in square brackets added by the Board, reads as follows:

[F1] "A household appliance (1) comprising
[F2] a body (2),
[F3] a cut-out (3) arranged on the body (2), and
[F4] a housing (4) that is disposed into the cut-out (3) and that houses the electronic components placed therein,
[F5] wherein there is a protector (5) and

[F6] a cover (6),
[F7] wherein the protector (5) is mounted over the housing (4) and
[F8] the cover (6) is mounted on the protector (5),
[F9] wherein the protector (5) is fixed between the housing (4) and the cover (6),
[F10] wherein the cover (6) is produced from metal, characterized in that
[F11] the protector (5) is produced from plastic."

V. In the present decision, reference is made to the following documents:

E1: JP2009186102A (references are to its English language translation)

D3: DE 102009045542 A1

VI. The parties' arguments relevant to the decision are discussed in detail in the Reasons for the Decision.

Reasons for the Decision

1. The appeal is admissible.
2. Background

The patent relates to a household appliance having a body and a housing in which electronic components are housed. A cut-out is provided on the body into which the housing is disposed (see published patent specification, claim 1 and paragraphs [0001], [0002], [0006] and [0020]).

3. Request for reimbursement of the appeal fee due to an alleged substantial procedural violation made by the opposition division.

3.1 In its communication (see section 7) the Board set out its reasoned opinion as to why it would not be equitable to reimburse the appellant-opponent's appeal fee. The Board wrote the following:

"7. Alleged substantial procedural violation, and request for reimbursement of the opponent's appeal fee

7.1 The appellant-opponent alleges (appeal grounds, page 11, point 6) that a substantial procedural violation occurred, seemingly pertaining to its right to be heard, by the European Patent Office (EPO) not providing it with a redacted copy of a letter of the proprietor containing confidential contact details of the proprietor's representative who was to participate in the opposition oral proceedings.

7.2 As the opposition division made clear in its communication of 29 April 2022, this information, to be provided by the parties on a separate sheet, is not publicly available. Such information is requested by the EPO to ensure the smooth running of oral proceedings by video conference from a technical perspective. Therefore, the opposition division followed the correct procedure in not making this information available to the opponent, whether or not it followed the same procedure with corresponding information provided by the opponent. Therefore, the Board sees no procedural violation in this regard, let alone a substantial one justifying repayment of the appeal fee.

7.3 In this respect, according to established jurisprudence (see CLBA, IV.E. 8.6, and 8.6.1 and the decisions cited therein, in particular T 2106/10, reasons, point 3), reimbursement of the appeal fees must be equitable. In particular there must be a causal link between a substantial procedural violation and the filing of the appeal. In the present case, the Board sees no substantial procedural violation so the request cannot be allowed. In any case, a redacted version of such person information would, at most amount to the mere information that the proprietor intended to be represented at the oral proceedings. The appellant-opponent has not explained, nor is the Board able to understand how the opponent having or not having such information before the oral proceedings might have influenced the outcome of the proceedings. For these reasons, the Board does not consider it equitable to reimburse the opponent's appeal fee".

3.2 Neither in written proceedings, nor at the oral proceedings did the appellant comment in substance on this aspect of the communication. In the absence of any such comments, the Board saw no reason to deviate from its previous opinion on these points. Therefore, the Board decided to refuse the appellant's request for reimbursement of its appeal fee.

4. Main request (as granted), claim 1, novelty with respect to E1

4.1 E1 (see abstract and figure 1) discloses a refrigerator 1, thus a household appliance. It has freezing and refrigerating chambers surrounded by walls, thus the refrigerator has a body, as required by claim features F1 and F2. As explained in the abstract, and in more detail starting in paragraph [0029] with figures 7 to

18, the appliance has a housing (electrical box 40) for a control circuit, thus for housing electronic components, as required by part of claim feature F4. As best seen in the exploded view of figure 10 and explained in paragraphs [0032] to [0034], the housing is provided with a metal cover 41 and a cover [protector] 50 made of resin, that is plastic. Thus E1 discloses claim features F6, F10 and F11.

4.2 The claim also requires (features F3 and F4) that a cut-out is provided on the body and that the housing is disposed into the cut-out. In its decision, the opposition division interpreted the term cut-out (see reasons, 3.2.1) and concluded that E1 did not disclose a cut-out. In its appeal grounds (see pages 3-5), the appellant-opponent had disputed the definition of a cut-out formulated by the opposition division in its decision (cf. reasons 3.2.1). In its communication, the Board considered the interpretation of the disputed term and wrote the following:

"8.1 Interpretation of the claim term "cut-out"

In interpreting terms used in claims, the skilled person gives terms their usual meanings. A usual meaning of the term "cut-out" (see Oxford English Dictionary on line (OED), meaning 2.a) is: The space formed by a piece or section being cut out (as of a floor). In the claim, the cut-out is arranged on the body of a household appliance, so would seem to pertain to a space formed in the appliance's body, whether by physically cutting to remove a section or omitting it in the first place. That the electronic component housing is disposed into the cut-out only confirms that the term cut-out relates to a space formed in the body. In the present case, the Board sees no reason for the

skilled person to consult the description, since it holds that the term cut-out as used in the claim is unambiguous. In any case, the term is used in exactly the same way in the description (see paragraphs [0006] and [0020]), so consulting the description would do no more than corroborate what the claim already says. From the above, contrary to how the appellant-opponent has argued (see appeal grounds, top of page 5), the claimed cut-out requires the absence of material of the body so it is not merely a recess".

- 4.2.1 At the oral proceedings before the Board, the appellant-opponent agreed with the contextual definition of a cut-out formulated by the Board in its communication (*a space formed in the appliance's body, whether by physically cutting to remove a section or omitting it in the first place*).
- 4.2.2 As explained in E1, paragraphs [0027] and [0029] with figures 7 to 9, the electronics housing 40 is mounted in a machine room 30 formed behind the lower part of the refrigerator. This machine room has front and upper surfaces surrounded by the heat insulating [refrigerator] box body 33. Its bottom surface is formed by a base plate 32. *Angles 34 and 35, which appear to be brackets, are mounted at the rear corners of the machine room. As best seen in figure 7, these extend between the box body 33 and base plate 32. The housing 40 is installed on one (left viewed from the rear) side of the machine room by attaching it to the angle [bracket] 35.*
- 4.2.3 In the Board's view, the skilled person would understand the body of a household appliance as its main structure. In the case of E1 (see paragraph [0027]), this would principally be the freezing and

cooling chambers made up of a heat insulating box body 33, parts of which form the upper and front wall of the machine room 30 (figure 7).

4.2.4 Whether or not the skilled person would also consider the bottom plate 32, and possibly side walls which the appellant-opponent has argued delimit the machine room space, but which are not described in E1, might be part of the body of E1's appliance, in the Board's view, the machine room is not a *cut-out*. In accordance with the definition developed by the Board, a *cut-out* is a space that exists because material has been *cut-out* or *omitted*. It must therefore have a continuous boundary within the body, a void whose existence depends on the integrity of that part of the body in which it is formed (whether by cutting or omitting).

4.2.5 In contrast, E1's machine room 30 has a discontinuous boundary. It is a space defined by the juxtaposition of discrete parts that have been assembled together (box body 33, angles 34 and 35, bottom plate 32 and possibly side walls), rather than being defined by the cutting or omission of material. Therefore, the machine room 30 is not a cut-out and E1's electronic components' housing is not disposed in a cut out. In other words, the Board agrees with the opposition division's finding (see impugned decision, reasons 3.2.1) that E1 does not disclose a cut-out. With that, E3 does not disclose claim features F3 and F4. In the light of this, the Board finds the subject matter of granted claim 1 to be new with respect to E1.

4.3 The further claim features F7, F8 and F9 define structural relationships between the electronics housing, protector and cover. The Board agrees with the reasoning and finding of the opposition division (see

its decision, reasons 3.2.2) that E1 discloses these features. Although the proprietor has taken a different view, since the claim's cut-out features F3 and F4 establish novelty over E1 and, as will be explained below are decisive for the Board's positive assessment of inventive step, more detailed reasoning with regard to features F7 to F9 on the part of the Board is superfluous for the purposes of this decision and so has not been included in this decision.

5. Main request, claim 1, inventive step starting from E1 with the skilled person's general knowledge
 - 5.1 As explained above, the Board considers that the subject matter of claim 1 differs from E1 in respect of features F3 and F4 (cut-out arranged on the body and housing for electronics disposed therein). In E1, the machine room 30 into which the housing for electronics 40 is disposed, by attaching it to the angle 35, is not a cut-out.
 - 5.2 The objective technical problem should normally start from that presented in the patent. The respondent-proprietor has argued that this should be to improve safety and to allow a simpler construction with fewer parts (see reply to appeal of 5 July 2023, last two lines). The Board is unable to identify any improvement of safety or reduction in parts disclosed in the patent as being associated with the idea of using a cut-out for mounting the electronics housing: Paragraphs [0004] to [0006] of the published patent specification explain that the invention aims to provide a fire-safe appliance. However, this is achieved *by means of* the [electronics] *housing* itself, not by how it is mounted. The first part of paragraph [0006] merely mirrors the claim in stating that the cut-out is arranged on the

body and the housing disposed therein without explaining any particular advantage. That said, the Board agrees with the respondent that the skilled person would know that mounting a housing in a cut-out is a simple mounting solution. Therefore, the objective technical problem can be formulated as: How to modify the household appliance of E1 to provide a simple alternative way of mounting the electronics housing.

5.3 In its appeal grounds, top of page 6, the appellant-opponent proposed two questions relevant to inventive step in this case:

1. Whether a "*cut-out*" constitutes an alternative known in the underlying technical field; and
2. Whether E1 teaches away from the "*cut-out*" feature.

5.3.1 The Board finds this a reasonable approach to the question of obviousness. The approach boils down to the could-would approach: In solving the objective technical problem (simple alternative mounting) *could* the skilled person provide a cut-out for mounting E1's electronics box because they were aware of them? If the answer is yes, *would* they do so to arrive at the claimed subject matter?

5.3.2 The Board answers the first question in the affirmative. The Board has no doubt that the skilled person knows about cut-outs for mounting elements in general from their common general knowledge, so they certainly could provide a cut-out in the body of E1's appliance. Moreover, the Board agrees with the appellant that there appears to be nothing particular about E1's electronic box 40 (see again figure 7) which

might make it, as such, inherently unsuited to being mounted in a cut-out.

- 5.3.3 Therefore, the question of inventive step hinges on whether, in seeking to solve the objective technical problem, the skilled person *would* modify E1's household appliance by mounting its electronics housing in the way claimed. The Board answers this in the negative.
- 5.3.4 As can best be seen in E1, figures 7 to 9, the electronics housing 40 is a relatively large component. Its square footprint has a height and width similar if not greater than the height of the fridge compressor 31. As to its depth (see figures 8 and 9), this considerably exceeds the wall thickness of the refrigerator's insulating box body 33.
- 5.3.5 In its letter of 3 October 2024 (see pages 1 to 4) and at the oral proceedings before the Board, the appellant-opponent proposed various locations for a cut-out that it considered suitable for receiving E1's electronics box. All were in the insulated wall of E1's insulating box body 33. By the very nature of its intended purpose, the interior of a refrigerator/freezer is maintained at a lower temperature than the exterior environment in which it operates. The purpose of the insulating walls of its box body is the thermal isolation of these two environments.
- 5.3.6 Given the considerable dimensions of E1's electronics housing 40, both in terms of footprint and depth, the skilled person would simply not mount it in a cut-out in the insulated box body wall 33. To do so would compromise the insulating effect of the box body at the cut-out site, creating a thermal bridge.

5.3.7 Whilst the Board agrees with the appellant-opponent, that the claim does not require the electronics housing to sit flush with the body of the appliance once fitted - it could protrude somewhat (cf. published patent specification, figure 1), any cut-out in a wall of E1's box body 33 would nevertheless have to be sufficiently deep to securely hold the electronics housing 40. Such a sufficient depth would considerably reduce the thickness of the insulation in the box body 33. Therefore, even if the skilled person were to have the idea that they could mount E1's housing 40 in a protruding way in a cut-out, they would not do so for the same reasons as outlined above (the insulation of the box body 33 would be compromised).

5.3.8 Nor is the Board convinced by the appellant-opponent's argument that, in the pursuit of a simple alternative mounting arrangement for E1's electronics housing the skilled person would first make a suitable cut-out in E1's insulated box body to accommodate the housing 40 and then additionally provide more insulation inside the refrigerated space to prevent the cut-out causing a thermal bridge. Such a further modification would require the redesigning of the insulated box body (to add insulation) and thus be a complex rather than a simple alternative to E1's disclosed mounting arrangement for the housing 40, however cheap insulating material may be. Moreover, in the Board's view, this would necessitate more than the mere application of routine skills.

5.3.9 The Board is also not convinced by the appellant-opponent's argument that, because E1's refrigerator appears to have other elements that pass into the insulating box body (see figure 3), this would be a hint to the skilled person that a cut-out would be a

suitable mounting arrangement for the E1's electronics housing 40 in its box body 33. The elements seen in figure 3 are not described, nor is it clear whether or to what extent they extend into the insulating box body 33, therefore, from the figure alone there appears to be no hint to the skilled person to provide a cut-out.

The respondent-proprietor has postulated that the components in question could be door hinges, which seems plausible to the Board. However, any means extending into E1's box body 33 by which a hinge might be secured, such as screws, would be small compared to E1's electronics box 40. Therefore, the skilled person would not receive any hint from this as to how to mount E1's electronics housing, let alone would the observation prompt them to think it could be mounted in a cut-out in E1's insulating box body 33 without compromising the latter's insulating effect.

5.4 For all these reasons, the Board has not been convinced by the appellant-opponent's arguments that the skilled person would arrive at the subject matter of claim 1 starting from E1 in combination with the skilled person's common general knowledge.

6. Main request, claim 1, inventive step starting from E1's electronic housing in combination with a notorious household appliance

6.1 The appellant-opponent argued for the first time at the oral proceedings before the Board that because E1's refrigerator is merely one example of a generic class of household appliances which the skilled person knows from their general knowledge, inventive step can be considered starting from E1's electronics housing in combination with a notorious household appliance. It

argued that this was not a new objection because, like the objection dealt with in the impugned decision, it started from E1 and considered the skilled person's common general knowledge. The Board disagrees.

In the impugned decision and the appeal grounds, the objection starting from E1 considered E1's refrigerator combined with common general knowledge. This is not the same as the present objection which starts from just a part of E1's refrigerator, namely its electronics housing. Therefore, the objection is a new one and late filed.

6.2 Therefore, it is an amendment to the appellant's case made after notification of the Board's communication under Article 15, paragraph 1 RPBA. Accordingly, its admittance is subject to the provisions of Article 13(2) RPBA. In particular, it may only be admitted if there are exceptional circumstances which have been justified by cogent reasons. In this regard, the appellant-opponent has only argued that raising the objection late was justified because it was highly relevant. The relevance of this objection is not a cogent reason for its admittance because it sheds no light on any circumstance under which it has been raised but is merely the appellant's evaluation of the objection itself.

6.3 Therefore, the Board decided not to admit the objection into the proceedings, Article 13(2) RPBA.

7. Main request, claim 1, inventive step starting from E1 with D3
- 7.1 In its appeal grounds (see section 5.1, last two lines), the appellant-opponent wrote: *"We therefore submit that the Opposition Division should have concluded that claim 1 lacks an inventive step over document E1 combined with common general knowledge or D3."*
- 7.2 Whilst the objection based on E1 with common general knowledge was raised in opposition proceedings and considered by the division in its decision, the combination of E1 with D3 was not (see the undisputed minutes, points 28 to 31). Therefore, the Board sees no reason as to why the opposition should have considered it in its decision. On the contrary, it is a new objection that was first raised in the appeal proceedings. It is thus an amendment to the appellant-opponent's case and its admittance subject to the Board's discretion under Article 12(4) and 12(6) RPBA.
- 7.3 The appellant argued that it should be admitted into the appeal proceedings because it was a legitimate response to the opposition division's surprising interpretation of a cut-out presented in its written decision and moreover highly relevant and not complex.
- 7.4 According to Article 12(6) RPBA, second sentence [t]he Board shall not admit requests, facts, objections or evidence which should have been submitted [...] in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

7.5 In the Board's view, the opposition division's definition of a cut-out presented in the impugned decision (see reasons, point 3.2.1) cannot constitute a circumstance justifying admittance of the objection for the first time in appeal. This is because the opposition division already presented, almost word for word, the same definition of a cut-out in its communication in preparation for opposition oral proceedings (point 3.2.1), more than 6 months prior to the oral proceedings. Therefore, the appellant-opponent had ample time to prepare a suitable response to this in the opposition proceedings.

Moreover, the Board considers that the objection could and indeed should have been raised in opposition proceedings: The claim concerned is as granted and both E1 and D3 were available to the opponent from the start of the opposition proceedings (see its opposition notice top of pages 2 and 13 and the granted patent paragraph [0002], where D3 is mentioned). Therefore, the appellant should have formulated the present objection during the opposition proceedings, had it wished it to be considered by the Board.

For these reasons, irrespective of how relevant or lacking in complexity the objection (E1 with D3) might be, the Board decided not to admit it into the appeal proceedings, Article 12(4) with 12(6) RPBA.

8. Main request, claim 1, inventive step objection starting from D3 with E1

8.1 This objection was raised in the opposition proceedings but not admitted by the opposition division (see the impugned decision, section 4.4). As codified in Article 12(6) RPBA, first sentence, the Board does not admit

requests, facts, objections or evidence which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance. In its communication, the Board examined the objection (see section 10) and expressed its intention not to admit the fact (lack of inventive step starting from D3 with E1) into the appeal proceedings. The Board wrote the following:

"10. Main request, claim 1, inventive step starting from D3 in combination with E1

10.1 According to settled jurisprudence of the Boards of appeal (see Case Law of the Boards of Appeal, 10th edition, 2022 (CLBA) IV.C.4.5.2, and the cited decisions, for example T 0640/91, headnote III and reasons, 6.3) a board of appeal should only overrule the way in which a department of first instance has exercised its discretion if it concludes that it has done so according to the wrong principles, or without taking into account the right principles, or in an unreasonable way.

10.2 In the present case, it is not disputed that the opponent did not argue lack of inventive step starting from D3 in its opposition notice, it was only used to argue lack of novelty (cf. opposition notice, pages 4, 5 and 6). The inventive step objection was late filed in opposition. The opposition division (see its impugned decision, section 4.4) exercised its discretion under Article 114(2) EPC not to admit this objection into the proceedings.

10.3 Contrary to how the appellant-opponent argues in its appeal grounds (see section 5.2), the objection was late filed. Whether the opponent first formulated it due to the (for the opponent unexpected) failure of a different objection, does not render it timely, nor automatically justify its admittance. Whether the objection was first made at the oral proceedings (cf. minutes point 17) or with the opponent's letter of 29 April 2022, since the latter date is well after the 9 month opposition period, in both cases the objection would be late filed.

In considering admittance of the late filed inventive step objection based on D3, the opposition division considered its prima facie relevance (see impugned decision, section 4.4 and minutes point 21), which is the correct principle to apply (see Guidelines for examination at the EPO, E-VI-2). That the appellant-opponent may not agree with the opposition division's conclusion does not render the principle applied by the opposition division wrong. Moreover, the matter was discussed with the parties at the oral proceedings, so they were heard. Therefore, in exercising its discretion, the opposition division appears to have applied the right principles and to have done so in a reasonable way. Therefore, the Board does not intend to overrule how the opposition division exercised its discretion.

Consequently, the Board does not intend to admit the new fact of lack of lack of inventive step starting from D3 into the appeal proceedings".

8.2 Neither in written proceedings nor at the oral proceedings did the parties comment on this part of the communication. Nor did the Board see any reason to

revise its preliminary opinion. Therefore, the Board decided not to admit the objection (lack of inventive step starting from D3 with E1) into the appeal proceedings.

9. The objections raised by the appellant against the opposition decision's decision to maintain the patent as granted have been found by the Board to be either not convincing or have not been admitted into the appeal proceedings. Moreover, the appellant-opponent's request for reimbursement of the appeal fee was refused. Therefore, the Board can but dismiss the appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

J. Wright

Decision electronically authenticated