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**Datasheet for the decision  
of 28 July 2025**

**Case Number:** T 1966/23 - 3.2.07

**Application Number:** 16861084.8

**Publication Number:** 3454714

**IPC:** A47L9/14

**Language of the proceedings:** EN

**Title of invention:**

CONNECTOR PLATE FOR A VACUUM CLEANER DUST CONTAINER AND A DUST CONTAINER

**Patent Proprietor:**

Aktiebolaget Electrolux

**Opponents:**

ELKU Bauteile GmbH  
Wolf PVG GmbH & Co. KG - opposition withdrawn

**Relevant legal provisions:**

EPC Art. 100(a), 54, 134(8)  
RPBA 2020 Art. 12(6) sentence 2, 13(2)

**Keyword:**

Representation - oral submissions by accompanying person  
Grounds for opposition - lack of patentability (yes)  
Novelty - (no)  
Late-filed facts, evidence and objections - should have been  
submitted in first-instance proceedings (yes) - admitted (no)  
Amendment after notification of a communication under Article  
15(1) RPBA - cogent reasons (no) - exceptional circumstances  
(no) - admitted (no)

**Decisions cited:**

J 0012/18, G 0009/91, G 0010/91, G 0004/95



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1966/23 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 28 July 2025**

**Appellant:** Aktiebolaget Electrolux  
(Patent Proprietor) S:t Göransgatan 143  
105 45 Stockholm (SE)

**Representative:** Electrolux Group Patents  
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105 45 Stockholm (SE)

**Appellant:** ELKU Bauteile GmbH  
(Opponent) Im Meisenfeld 18  
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**Representative:** Szaunig, Bernd  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
11 October 2023 concerning maintenance of the  
European Patent No. 3454714 in amended form.**

**Composition of the Board:**

**Chairwoman** A. Beckman  
**Members:** A. Cano Palmero  
E. Mille

## **Summary of Facts and Submissions**

- I. The patent proprietor and opponent 1 (appellants) lodged appeals within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 3 454 714 in amended form on the basis of auxiliary request 1.
- II. Two oppositions were filed against the patent in its entirety and based on the grounds for opposition pursuant to Articles 100(a), 100(b) and 100(c) EPC (novelty, inventive step, sufficiency of disclosure and added subject-matter).
- III. Opponent 2 withdrew its opposition with letter dated 16 November 2022 and ceased to be a party to the proceedings.
- IV. In preparation for oral proceedings, the board communicated its preliminary assessment of the case by means of a communication pursuant to Article 15(1) RPBA. The board indicated that both appeals were likely to be dismissed.
- V. In response to the communication under Article 15(1) RPBA, opponent 1 (in the following: "the opponent") submitted arguments in the substance with letter dated 8 July 2025.
- VI. Oral proceedings before the board took place on 28 July 2025. At the conclusion of the proceedings the decision was announced. Further details of the proceedings can be found in the minutes thereof.

- VII. The lines of argument of the parties relevant for the present decision are dealt with in detail in the reasons for the decision.
- VIII. Claim 1 of the main request (*i.e.* according to the patent as granted), with the feature labelling added as indicated in point I.10 of the decision under appeal, reads as follows:
- "1.1 Connector plate (10) for a vacuum cleaner dust container (30),  
1.2 the connector plate (10) comprising a front surface (5) having an opening (6) for an airflow,  
1.3 a first side surface (1) adapted to be inserted into holder of a vacuum cleaner,  
1.4 a second opposite side surface (2),  
1.5 the second side surface (2) is arranged closer to the opening than the first side surface (1),  
1.6 a third side surface (3) connecting the first and second side surfaces,  
1.7 and a fourth side surface (4) connecting the first and second side surfaces,  
1.8 characterized in that the connector plate comprises a flexible zone (7)  
1.9 arranged between the opening (6) and the first surface (1)."
- IX. Claim 1 of auxiliary request 1a is identical to claim 1 of the main request.
- X. Claim 1 of auxiliary request 1 (*i.e.* according to the patent as maintained) corresponds to claim 1 of the main request whereby the following features, with the feature labelling as indicated in point II.4.4.1 of the

decision under appeal, have been added at the end of the claim:

"1.10 the third and fourth side both being adapted to slide in a holder (40) of a vacuum cleaner, and  
1.11 a handle (11) is arranged on the second surface (2)."

XI. Since the wording of the claims of auxiliary requests 4a, 4b, 5, 2 and 3 is not relevant for the present decision, there is no need to reproduce it here.

XII. The final requests of the parties are as follows:

for the opponent,

that the decision under appeal be set aside and that the patent be revoked;

for the patent proprietor,

that the decision under appeal be set aside, and that the patent be maintained as granted (main request),

or, in the alternative, that the patent be maintained in amended form on the basis of the set of claims of auxiliary request 1a corresponding to the main request underlying the impugned decision,

or, in the alternative, that the appeal of the opponent be dismissed, *i.e.* that the patent be maintained in the form held by the opposition division to meet the requirements of the EPC on the basis of auxiliary request 1,

or, in the alternative,

that the patent be maintained in amended form on the basis of the set of claims of any of auxiliary requests 4a, 4b, 5, 2 or 3.

### **Reasons for the Decision**

1. *Request for an accompanying person be permitted to make oral submissions during the oral proceedings before the board*
- 1.1 The representative of the opponent requested that the accompanying person, qualified as a patent assessor, be permitted to make oral submissions during the oral proceedings before the board in order to present arguments dealing with technical aspects of the case.
- 1.2 The board ascertained that the accompanying person is not entered in the list of professional representatives before the European Patent Office. Furthermore, pursuant to Article 134(8) EPC, the accompanying person in this particular case is also not entitled to act as a representative in proceedings before the EPO, as he is indeed a German patent assessor but not registered as a national legal practitioner in a Contracting State.
- 1.3 According to decision G 4/95, in opposition appeal proceedings there exists no legal entitlement to oral submissions by an accompanying person; such submissions may only be permitted with the consent of the board and at its discretion (see Case Law of the Boards of Appeal [CLB], 11th edition 2025, III.V.5.1). In particular, the board is convinced that an accompanying person may not make all or almost all of the essential submissions in place of an authorized representative without special reasons being present. In the present case, the

representative of the opponent did not assert any such reasons, other than the technical expertise of the accompanying person.

- 1.4 In exercising the discretion thus conferred upon it, the board took into account that the opponent had had only requested that the accompanying person be permitted to make oral submissions for the first time during the oral proceedings before the board, without further specifying the subject-matter of the intended oral submissions, other than that they would relate to technical aspects of the case.
- 1.5 In order to ensure that the oral submissions were made under the continuous responsibility and supervision of the opponent's representative, the board decided that the representative must present the complete case, as is expected under the case law established in G 4/95 from a representative in oral proceedings. The board decided that the person accompanying the opponent's representative could only make technical oral submissions during the oral proceedings at the request of the board.

***Patent proprietor's appeal***

2. *Patent as granted (main request) - Novelty in view of D17 (US 4,678,486 A), Articles 100(a) and 54 EPC*
- 2.1 The board referred to the following factual and legal position with respect to novelty of the subject-matter of claim 1 of the main request and the admittance of a new argument of the patent proprietor under point 6 of its communication pursuant to Article 15(1) RPBA, which was neither questioned nor commented on by the parties during the oral proceedings before the board. After

having reconsidered all relevant legal and factual aspects of the case, the board does not see any reason to deviate from its opinion and confirms it as follows.

2.2 Feature 1.5

2.2.1 The patent proprietor argued in point 3.2.1 of its statement setting out the grounds of appeal that feature 1.5 was not anticipated by document D17. However, in point 5 of its reply to the opponent's statement setting out the grounds of appeal and in point 2.1.1 of its letter dated 15 October 2024, the patent proprietor merely identified features 1.8 and 1.9 as distinguishing features over D17, but not feature 1.5.

2.2.2 The board notes that during opposition proceedings, both opponents argued in their respective notices of opposition that feature 1.5 was anticipated by D17 (see point 5, page 13 of opponent 1's notice of opposition and point 3.1 of opponent 2's notice of opposition). Again, in point 5.1.3 of its reply to the notices of opposition, the patent proprietor only identified features 1.8 and 1.9 as distinguishing features with respect to D17.

2.2.3 In point 6.3.2.5 of its preliminary opinion attached to the summons for oral proceedings issued on 8 November 2022, the opposition division established that it was uncontested that D17 anticipated features 1.1 to 1.7. This preliminary opinion was confirmed with the finding in point 2.2.2 of the reasons for the decision under appeal.

2.2.4 According to Article 12(6), second sentence, RPBA, the board shall not admit requests, facts, objections or

evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

2.2.5 Considering that the main aim of appeal proceedings is that of reviewing the decisions of the administrative departments of the EPO (cf. Article 12(2) RPBA), the board does not consider it appropriate that the patent proprietor raises the argument regarding an alleged additional distinguishing feature for the first time in appeal proceedings, thereby avoiding having a decision from the competent EPO department of a fact that had remained uncontested.

2.2.6 The board is of the opinion that the patent proprietor should have contested in opposition proceedings the disclosure of feature 1.5 in D17 to allow the opponents to take position on it and the opposition division to decide on this matter.

2.2.7 In the absence of any justifying circumstances submitted by the patent proprietor, the board does not admit the argument of the patent proprietor that feature 1.5 of claim 1 of the main request was not anticipated by D17 into the proceedings pursuant to Article 12(6), second sentence, RPBA.

2.3 Features 1.8 and 1.9

2.3.1 The patent proprietor contested the reasoned finding in point 2.2.2 of the reasons for the decision under appeal that features 1.8 and 1.9 were disclosed in D17. In particular, the patent proprietor argued that the lower end section 5 of the plate stabilizes the plate 1 and it is not a flexible zone of the plate.

- 2.3.2 The board disagrees and rather agrees with the opposition division that the line 4 of bending in D17, arranged between the opening 3 and the lower end 5, is a flexible zone in the sense of features 1.8 and 1.9.
- 2.4 In sum, the board finds that the subject-matter of claim 1 according to the main request is not novel over the disclosure of D17.
3. *Auxiliary request 1a - Novelty, Article 54 EPC*
- 3.1 The board referred to the following factual and legal position with respect to novelty of the subject-matter of claim 1 of auxiliary request 1a under point 7 of its communication pursuant to Article 15(1) RPBA, which was neither questioned nor commented on by the parties during the oral proceedings before the board. After having reconsidered all relevant legal and factual aspects of the case, the board does not see any reason to deviate from its opinion and confirms it as follows.
- 3.2 The subject-matter of claim 1 of auxiliary request 1a is identical to the subject-matter of claim 1 of the patent as granted. For the same reasons as for claim 1 of the main request set out above, the subject-matter of claim 1 of auxiliary request 1a lacks novelty in view of the disclosure of D17.

**Opponent's appeal**

4. *Evidence, arguments and objections submitted for the first time in appeal proceedings by the opponent - Admittance - Article 12(6) RPBA*

4.1 The opponent confirmed during the oral proceedings before the board that the following objections have been filed for the first time during appeal proceedings with its statement setting out the grounds of appeal against patentability of auxiliary request 1:

- lack of clarity of claim 1;
- lack of novelty of the subject-matter of claim 1 in view of document D17;
- lack of inventive step of the subject-matter of claim 1 starting from D17 as closest prior art in combination with the common general knowledge or in combination with the teaching of any of documents

D18 (DE 10 2007 053 151 A1),

D2 (DE 20 2013 001 096 U1),

D18.2 (DE 10 2008 017 575 A1) or

D18.3 (DE 10 2011 008 117 A1),

whereby Mr Wulbrandt was offered as a witness;

- lack of inventive step of the subject-matter of claim 1 in view of the teachings of the following alleged public prior uses:

- "Eurofilters N.V." (Nr. 1),

- "Branofilter GmbH" (Nr. 2),

- "Voigt Gebr." (Nr. 3),

whereby Mr Saurer and Mr Wulbrandt were offered as witnesses; and

- inadmissible amendments under Article 123(2) EPC of claim 4.

- 4.2 As already stated in point 2.2.4 above, the board notes that according to Article 12(6), second sentence, RPBA, the board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.
- 4.3 According to the opponent, the objections were *prima facie* relevant and could not be seen as an abuse of the proceedings. Indeed, these objections had to be filed in view of the highly surprising decision of the opposition division that features 1.10 and 1.11 of auxiliary request 1 contained patentable subject-matter. The opponent further argued that failure to admit the objections set out in point 4.1 above would amount to disregarding the "factual reality" that the patent, as maintained, failed to comply with the requirements of the EPC. Such an outcome would be contrary to the interest of the public and incompatible with the principle of fair proceedings and legitimate expectations, as contemplated under Article 125 EPC. In addition, the opponent indicated that the objection as regards lack of inventive step based on documents D17 and D18 had already been raised during opposition proceedings at least with regard to the dependent claims of the patent as granted.
- 4.4 The board is not persuaded by the opponent's arguments for the following reasons.
- 4.5 Firstly, the board notes that the primary object of the appeal proceedings, as reflected by Article 12(2) RPBA, is to review the decision under appeal in a judicial manner. The appeal proceedings should therefore be based on the facts, evidence and requests which led to

the decision under appeal (see e.g. J 12/18, and CLB, *supra*, V.A.4.3.1). Contrary to the opponent's position, the board is of the view that the non-admittance of new alleged facts, objections and evidence at the appeal stage does not violate the legitimate expectations of the parties in *inter partes* proceedings. Rather, it reflects the procedural framework and purpose of the appeal proceedings as defined by the EPC and the RPBA. In particular, the appeal procedure is not a continuation of the opposition proceedings, but a judicial review of the contested decision (see G 9/91 and G 10/91).

- 4.6 Secondly, while the opponent may perceive that an exclusion of certain late-filed material would prevent the full exposition and consideration of the so-called alleged "factual reality", this does not override the need to ensure orderly and fair proceedings in which all parties are incentivized to present their full case at the appropriate time. The legal framework dealing with the admittance of facts, evidence, objections and requests in the appeal phase ensures that the review remains focused and that no party is procedurally disadvantaged by late tactical shifts in the parties' respective cases.
- 4.7 Accordingly, the non-admittance of new facts, evidence, requests and objections that could have been presented earlier is consistent with the principle of legitimate expectations and does not contravene the rights of the parties, provided they had a fair opportunity to present their case during the opposition proceedings.
- 4.8 In the case at hand, as correctly indicated by the patent proprietor, points 12 to 14 of the minutes of the oral proceedings before the opposition division

clearly reflect that the only objections raised on inventive step of the subject-matter of claim 1 of auxiliary request 1 were based on document D17 as closest prior art in combination with the teachings of any of documents D1 (**DE 20 2006 016 789 U1**) or D19 (**DE 102 03 405 B4**). Being asked by the chairman of the opposition division, the opponent confirmed he had no further objections. Accordingly, even assuming, as alleged by the opponent, that the objections directed against the granted dependent claims could, in some manner, be transposed to claim 1 of auxiliary request 1, this does not imply that such objections were maintained, so that the opposition division could not decide on them.

- 4.9 In addition, taking into account that claim 1 of auxiliary request 1 is the combination of granted claims 1, 2 and 4, the board is convinced that the opponent not only could, but also should have submitted and/or maintained the objections, evidence and offer of hearing of the witnesses listed in point 4.1 above when forming its case against auxiliary request 1 during opposition proceedings.
- 4.10 In sum, the board does not consider it appropriate that opponent starts a complete fresh case in appeal proceedings with regard to auxiliary request 1, thereby avoiding the patent proprietor to take position on it and having a decision from the opposition division in this respect.
- 4.11 In the absence of any convincing justifying circumstances submitted by opponent, the board does not admit any of the objections, arguments, evidence and offer of hearing witnesses listed in point 4.1 above into the proceedings under Article 12(6), second

sentence, RPBA since they could and should have been submitted in opposition proceedings.

5. *Auxiliary request 1 - Inventive step objection in view of D17 and D19, admittance under Article 13(2) RPBA*

5.1 During the oral proceedings before the board, the opponent raised for the first time in appeal proceedings an objection on lack of inventive step of the subject-matter of claim 1 of auxiliary request 1 in view of the teachings of D17 and D19.

5.2 This objection constitutes an amendment to the opponent's appeal case, the admittance of which is subject to the provisions of Article 13(2) RPBA.

5.3 Pursuant to Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

5.4 The opponent only argued that the decision of the opposition division's finding that features 1.10 and 1.11 met the requirements of the EPC with regard to novelty and inventive step was highly surprising. However, the opponent confirmed that it could not indicate any exceptional circumstance for not having raised this objection at least with its statement setting out the grounds of appeal.

5.5 The board therefore concludes that the opponent has not demonstrated with cogent reasons justifying the presence of exceptional circumstances which would, under Article 13(2) RPBA, justify deferring the

presentation of a new line of argument on inventive step until the oral proceedings, and the resulting amendment to the appellant's appeal case at this late stage of the proceedings.

5.6 Consequently, the line of argument on lack of inventive step of the subject-matter of claim 1 of auxiliary request 1 starting from D17 as the closest prior art in combination with the teaching of D19 is not taken into account in the appeal proceedings pursuant to Article 13(2) RPBA.

6. *Conclusions*

6.1 In view of the above considerations, the board concludes that the patent proprietor has not demonstrated with admissible and convincing arguments the incorrectness of the decision under appeal that the subject-matter of claim 1 of the main request and of auxiliary request 1a lacks novelty (see points 2. and 3. above). The appeal of the patent proprietor is therefore to be dismissed.

6.2 In addition, the board concludes that the opponent, in the absence of any admissible objection, including on inventive step, has not demonstrated the incorrectness of the decision under appeal that auxiliary request 1 meets the requirements of the EPC (see points 4. and 5. above). The appeal of the opponent is also to be dismissed.

**Order**

**For these reasons it is decided that:**

The appeals are dismissed.

The Registrar:

The Chairwoman:



S. Lichtenvort

A. Beckman

Decision electronically authenticated