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Datasheet for the decision of 27 September 2007

Case Number: T 1522/05 - 3.3.05

Application Number: 96104113.4

Publication Number: 0747329

IPC: C03C 17/34

Language of the proceedings: EN

Title of invention:
Heat treatable, durable IR-reflecting sputter-coated glasses and method of making same

Patentee:
GUARDIAN INDUSTRIES CORP.

Opponent:
SAINT GOBAIN GLASS FRANCE

Headword:
-

Relevant legal provisions (EPC 1973):
EPC Art. 100(c), 123(2), 123(3)

Keyword:
"Disclaimer not allowable (main request)"
"Remittal to opposition division for further prosecution (first auxiliary request)"

Decisions cited:
G 0001/03, G 0002/03

Catchword:
-

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Case Number: T 1522/05 **-** 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 27 September 2007

Appellant: (Patent Proprietor)
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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 30 September 2005 revoking European patent No. 0747329 pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: B. Czech
Members: H. Engl
K. Garnett

Summary of Facts and Submissions

I. This appeal lies against the decision of the opposition division posted on 30 September 2005 revoking European patent EP 0 747 329.

II. The opposition division held that the respective claims 1 of the main, first and second auxiliary requests then on file (submitted on 20 May 2003, 12 August 2005 and 15 September 2005, respectively) were objectionable under Article 100(c) EPC.

Claim 1 of the said main request reads as follows (amendments with respect to claim 1 as granted emphasised by the board):

"*1. A glass article which includes a glass substrate having thereon a sputter-coated layer system comprising from the glass substrate outward*

a) at least one substantially metallic layer which includes nickel or a nickel alloy; and

b) an overcoat layer of silicon nitride (Si_3N_4); ***wherein***

c) *said layer system does not comprise any metallic IR-reflecting layer made of silver, gold, copper, platinum, or alloys thereof; and* ***wherein***

d) *said at least one substantially metallic layer including nickel or a nickel alloy and said overcoat layer of silicon nitride (Si_3N_4) are each of sufficient thickness such that when the glass substrate has a thickness of about 1,5 - 13 mm and has said layer system thereon the so-layered glass article is heat treatable and* ***it*** *has a visible transmittance of about 1-80 % and a*

normal emissivity (E_n) of about 0,10-0,60;
characterized in that
e) said substantially metallic layer comprises a minor amount of a metallic oxide of said metal in said substantially metallic layer."

III. More specifically, the opposition division held that the disclaimer present in the quoted claim 1 neither was based on the original disclosure nor delimited the claims against an accidental disclosure by the prior art, and was thus objectionable under Article 123(2) EPC. The addition of feature (e) also did not comply with the requirement of Article 123(2) EPC, since this feature was based on originally filed claim 4 but did not comprise the feature "*substantially free of nitride*" required by originally filed claim 2 on which claim 4 depended. Further, both the respective claims 1 according to the first and second auxiliary requests contravened the requirements of Article 123(3) EPC.

IV. The following documents were *inter alia* cited during the opposition proceedings:

D2: EP 0 646 551 A1
D3: EP 0 456 487 A2
D4: EP 0 560 534 A1

V. With its statement of the grounds of appeal, submitted with letter dated 10 February 2006, the appellant filed three sets of amended claims as main, first auxiliary and second auxiliary requests, respectively.

Claim 1 of the said main request is identical to claim 1 of the main request underlying the decision under appeal (see point II above).

Claim 1 of the new first auxiliary request differs from claim 1 of the main request in that features a) and c) thereof are modified to read:

"*a) at least one substantially metallic layer of Ni, NiCr or Haynes 214 alloy; and*"

"*c) said layer system does not comprise any metallic IR-reflecting layer other than the at least one substantially metallic layer of Ni, NiCr or Haynes 214 alloy; and wherein*"

Moreover, in feature d) of present claim 1 of the first auxiliary request the expression "*said at least one substantially metallic layer*" replaces the expression "*said at least one substantially metallic layer including nickel or a nickel alloy*" comprised in claim 1 of the main request.

VI. The respondent (opponent) filed observations with letter of 24 September 2007.

VII. Oral proceedings were held on 27 September 2007.

VIII. The appellant's arguments may be summarized as follows:

Concerning the allowability of the disclaimer in claim 1 of the main request, the appellant firstly argued that said disclaimer found a basis in the application as filed. The present invention did not

relate to low-E glasses but was implicitly restricted to glasses with ordinary solar control layers blocking visible light and infrared radiation in equal measures and having a different optical appearance. This would be clear to the skilled person from the facts that in the examples no silver layer - typical for low-E glasses - was used; that no other functional layer responsible for the solar control properties of the coating besides a nickel-based layer was mentioned; that the application explicitly excluded silver as the most prominent and practically relevant material for making low-E coatings; that no example showed a visible transmissivity of more than 30%; and that the preferred range for E_n (from 0.15 to 0.6) only contained values above the maximum value of E_n = 0.12 for low-E glasses. Furthermore, it belonged to the common general knowledge of the skilled person that there were in practice four materials used in the production of ordinary low-E coatings, namely silver, gold, copper and platinum, as disclosed in e.g. D3. Since the application as filed was not concerned with low-E coatings, and explicitly excluded silver, it would be clear to the skilled person that, by implication, the other three metals known for the production of low-E coatings, *i.e.* gold, copper and platinum were excluded as well. Therefore, the disclaimer introduced into claim 1 of the main request excluding these materials was properly based on the application as filed and did not change the technical content thereof.

According to the second line of argument pursued by the appellant, even if the said disclaimer was considered as not disclosed in the application as filed, its insertion did not violate the requirement of

Article 123(2) EPC in the light of decisions G 0001/03 and G 0002/03 (OJ EPO, 2004, 413 and 448). The disclaimer had been introduced to restore novelty over documents D2, D3 and D4, which exclusively concerned low-E glasses. Since low-E glasses and ordinary solar control glasses had substantially different properties based on mutually contradicting physical effects, the skilled person would not consider documents D2, D3 or D4 when trying to improve existing ordinary solar control layers, which was the field of the patent in suit. Since these documents would thus not be considered in the examination of inventive step, their disclosures were a case of an accidental anticipation within the meaning of G 0001/03 and G 0002/03. The disclaimer was therefore allowable.

The appellant furthermore argued that the insertion of feature e) into claim 1 (all requests) was not only based on claims 2 and 4 of the application as filed, but also on its description. In this connection, the appellant referred *inter alia* to Figures 2A to 6, page 24, lines 20 to page 25, line 4, and the sentence bridging pages 25 and 26 of the application as filed. Even in the case of a slightly oxidised metallic layer, the feature "*free of nitride*" was only a preferred one, since the chemical resistance to be achieved by this feature was not a mandatory property of the claimed products.

Regarding the first auxiliary request, the appellant argued that amended feature c), replacing the disclaimer present in claim 1 as granted, had been worded so as to recite those specific metallic substances of which the IR-reflecting layer had to be

formed. It belonged to the general knowledge of the skilled person that layers of the specific materials with high nickel contents as recited in claim 1 reflected both IR and visible light. Feature c) as amended provided a definition of the materials to be used and their known function in positive and concrete terms, as in a "consisting of" type formulation. The said metallic materials were disclosed in the application as filed as particularly preferred materials, and the products according to examples 2 to 16 (Haynes 214), 17 to 19 (Ni) and 22 to 24 (NiCr 80/20) contained only these materials as IR-reflecting layer. Haynes 214 had a known specific composition also indicated in the patent in suit. The requirements of Article 123(2) EPC were thus met. Since glass articles having IR-reflecting layers of the kind excluded from claim 1 as granted by means of a disclaimer also did not fall within the ambit of present claim 1 either, the requirement of Article 123(3) EPC was also met.

IX. The respondent essentially argued as follows:

The application as filed did not unambiguously disclose that metallic IR-reflecting layers made of silver, gold, copper, platinum and alloys were to be excluded. In particular, nothing in the application as filed allowed it to be unambiguously deduced that the invention exclusively concerned solar control glasses which were different from low-E glasses. The wording of claim 1 of the application as filed and of present claim 1 also did not exclude low-E glasses. In particular, a glass with an E_n value of 0.1 as claimed was a low-E glass. Moreover, example 17 of the contested patent expressly concerned a low-E glass. The respondent also denied

that the preferred absence of a silver layer in a coating system would necessarily imply a solar control coating. Hence, the disclaimer in claim 1 according to the main request was not based on the application as filed. Therefore, the said disclaimer was allowable only under the stringent conditions set forth in G 0001/03, which were, however, also not met. In this respect, the respondent *inter alia* argued that documents D2 to D4 were by no means accidental disclosures, but pertained to the same art of coating glass with a layer system for controlling the radiation through it, using similar fabrication methods and materials. D2 to D4 thus not being accidental disclosures, the disclaimer in claim 1 of the main request was not allowable.

The insertion of feature e) into claim 1 (all requests) did not meet the requirement of Article 123(2) EPC. This feature was disclosed in claim 4 of the application as filed, but only in combination with the feature "*substantially free of any nitride*" in claim 2, on which it depended. The respondent also pointed to Figures 1A to 4B and 6 and their legend on pages 26 and 27, to the examples and to several passages at pages 12, 20 and 24 to 27 of the description of the application as filed to show that feature e) was only disclosed in combination with the feature "*free of nitride*". This latter feature was, however, missing from claim 1. At the oral proceedings, the respondent additionally pointed out that according to the sentence bridging description pages 25 and 26 the metallic layer(s) had to "*include at least about 10% by weight nickel*", which feature was, however, also missing from claim 1.

Concerning claim 1 of the auxiliary request, the respondent held that feature c) also contained an undisclosed disclaimer. There was no explicit disclosure in the application as filed that only Ni, NiCr and Haynes 214 alloy could be used as the IR reflecting layer. Since the disclaimer was not being used to exclude accidental anticipations, it was not allowable under Article 123(2) EPC. At the oral proceedings, the respondent additionally argued that since a layer of nickel did not reflect IR-radiation selectively, the wording of claim 1 was confusing. However, the respondent did not dispute that metallic layers of Ni, NiCr and Haynes 214 alloy were IR-reflective, although not selectively. The respondent also submitted that the term "Haynes 214" was objectionable under Articles 84, 123(2) and 123(3) EPC, since the composition of the alloy with this commercial name was not well defined and could change over time. Upon being questioned by the board the respondent stated that it had no further objections under Article 123(2) or (3) EPC against any of the other claims according to the first auxiliary request.

X. The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request, alternatively the first or second auxiliary requests, filed with the grounds of appeal on 10 February 2006.

The respondent requested that the appeal be dismissed, or in the event of the board finding that any of the sets of claims were allowable under Articles 123(2) and (3) EPC, the case be remitted to the Opposition Division for further prosecution.

Reasons for the Decision

1. The appeal is admissible.

Main request - claim 1

2. Allowability of amendments - Article 123(2) EPC

2.1 Feature c) of present claim 1 contains a disclaimer which excludes the presence of "*metallic IR-reflecting layers made of silver, gold, copper, platinum, or alloys thereof*".

2.2 Claim 9 of the application as filed provides a literal basis for excluding the presence of a silver layer. However, there is no explicit mention in the application as filed of the presence or absence of metallic IR-reflecting layers made of Au, Cu, Pt, or alloys thereof. This was acknowledged by the appellant. The appellant argued, however, that the presence of metallic IR-reflecting layer(s) made of Au, Cu, Pt, or alloys thereof was implicitly excluded.

2.3 The board cannot accept the appellant's supporting arguments for the following reasons.

2.3.1 Firstly, the appellant's argument that the application as filed related only to ordinary solar control glasses and implicitly excluded low-E glasses, is incorrect. According to the information provided by the appellant in the application as filed itself (pages 8 and 17 to 20), "*low-E glasses (coatings)*" generally have a normal

emissivity E_n of less than about 0.12 (see also document D2, page 3, lines 5 to 7). Claim 1 of the application as filed, like claim 1 according to the main request, concerns coated glass articles having a normal emissivity E_n as low as **0.10**, which value lies within the aforementioned E_n range typical for low-E coatings. Moreover, the coated glass of example 17 according to the invention, exhibiting an emissivity value E_n of 0.17, is also characterised as having "*low emittance characteristics*": see page 33 of the application as filed, footnote to the table. The appellant has not denied that in this footnote "E_n = 17" should obviously read "E_n = 0.17". On the other hand, the board also notes that claim 1 was not, and is still not, limited to glasses with particularly low visible transmittance values. Values of up to 80% are envisaged according to claim 1, and not only values of up to 30% as required *e.g.* for "privacy window" applications, according to the appellant. Considering that at least some low-E coated glasses clearly fall within the ambit of claim 1 of the application as filed, the application cannot be seen as implicitly excluding low-E glass.

2.3.2 Secondly, the disclosure of the preferred exclusion of silver layers does not constitute a direct and unambiguous basis for excluding gold, copper and platinum, and alloys thereof, as alleged by the appellant. Although gold, copper and platinum were also known to be useful, like silver, as IR-reflecting layers (see *e.g.* claim 5 of document D3), this alone does not imply that the disclosure of excluding a silver layer necessarily amounts to disclosing that other specific metals such as Au, Cu and Pt or alloys thereof are excluded as well. This is all the more so

when one considers that low-E coatings were not generally clearly and unambiguously excluded in the application as filed (see preceding paragraph).

2.4 Therefore, in the board's view, there is no supporting basis for the disclaimer in the application as filed.

2.5 Such an "undisclosed disclaimer" may still be allowable under Article 123(2) EPC under certain conditions set forth in decision G 0001/03. According to the appellant's second line of argument, the disclaimer was allowable since it delimited the claims over the accidental anticipation by documents D2, D3 and D4. The board cannot accept this argument, for the following reasons:

2.5.1 According to G 0001/03 the disclosure of a document pertaining to the prior art according to Article 54(2) EPC may only be disclaimed provided that certain criteria are met. In particular, it is specifically indicated in G 0001/03 that a disclaimer which is not disclosed in the application as filed may be allowable in order to *"restore novelty by delimiting a claim against an accidental anticipation under Article 54(2) EPC; an anticipation is accidental if it is so unrelated to and remote from the claimed invention that the person skilled in the art would never have taken it into consideration when making the invention"* (Order, point 2.1).

Further to the concept of "accidental disclosure", G 0001/03 states under Reasons point 2.2.2, first paragraph, last three sentences, and point 2.3.4, last two sentences:

"What counts is that from a technical point of view, the disclosure in question must be so unrelated and remote that the person skilled in the art would never have taken it into consideration when working on the invention"; and

"This should be ascertained without looking at the available further state of the art because a related document does not become an accidental anticipation merely because there are other disclosures which are even more closely related. In particular, the fact that a document is not considered to be the closest prior art is not sufficient to accept an accidental anticipation"; and

"*When an anticipation is taken as accidental, this means that it appears from the outset that the anticipation has nothing to do with the invention. Only if this is established, can the disclaimer be allowable.*"

2.5.2 As indicated above (point 2.3.1), present claim 1 also covers low-E glasses, *i.e.* coated glasses with E_n values down to 0.10. The skilled person, when working on the invention, would thus not have disregarded documents D2 to D4 on the grounds that they relate to low-E glasses.

2.5.3 More particularly, concerning the disclosure of documents D2 to D4, the board notes that each of them relates to solar control glasses (in the broad sense) comprising glass substrates having a system of layers coated thereon to control the optical properties (absorption/reflection). Preferred layer systems

according to each of documents D2 to D4 also comprise, *inter alia*, a layer of nickel or an alloy of nickel and chrome, and a layer of silico nitride. In addition, the layer systems are coated onto the glass substrate by sputtering, *i.e.* by the same method as used according to the patent in suit (see for instance D2, claims 1 and 28, Figures 1 and 3; page 9, line 46 to page 10, line 22; D3, claims 1, 3, 6, 7 and 8; page 3, lines 56 and 57; pages 5 and 6, table 1, left-hand column; and D4, page 2, lines 19 to 21 and lines 31 to 32; page 3, lines 27 to 30; page 5, table 1, left-hand column). Durability (abrasion resistance) and chemical stability of the layered coating systems, which are also sought-after qualities according to the patent in suit, are specifically addressed in documents D2, D3 and D4 in connection with Si_3N_4 layers (see D2, page 11, lines 42 to 44; D3, page 3, line 26; page 4, lines 30 to 31; page 7, abrasion resistance tests; D4; page 5, lines 13 to 14 and lines 42 to 43, table 2). Moreover, document D2 (page 8, lines 22 and 23; claim 28) is concerned with the same heat treatments of the coated glass as the patent in suit, namely the tempering, bending and heat strengthening thereof. It was not disputed during oral proceedings that some of the technical problems encountered during such heat treatments, in particular the problem of oxidation prevention, are the same in ordinary solar control and in low-E systems.

2.5.4 In view of these similarities in terms of the composition and structure of the products concerned, their preparation methods, and the properties to be achieved, the board is satisfied that the skilled person would have taken documents D2 to D4 into consideration when working on the present invention.

Considering the similarities addressed above, this finding would be valid even assuming in the appellant's favour - purely for the sake of argument - that the claimed invention was strictly limited to ordinary "solar control" coatings having properties differing from the ones of typical low-E glasses, *e.g.* by virtue of an E_n value of more than 0.12. D2 to D4 would still be considered as belonging to a very closely related technical field, and the skilled person would thus not have disregarded them from the outset when working on the invention, *i.e.* when searching for improved sputter-coated layer systems (see page 12, lines 8 to 14 of the application as filed). Whether or not they actually provide a pointer towards the claimed solution is not relevant in this context: see the passages of G 0001/03 concerning "accidental anticipation" quoted above.

2.5.5 Consequently, in the board's opinion, the disclosure of documents D2 to D4 cannot be considered as "accidental" in the sense of G 0001/03.

2.6 As the disclaimer in feature c) of claim 1 finds no basis in the application as filed, and since the disclosures of D2 to D4 are also not "accidental" in the sense of G 0001/03, the pre-grant amendment consisting in the insertion of said disclaimer into claim 1 is not allowable under Article 123(2) EPC. Therefore, the main request is rejected.

First auxiliary request

3. Allowability under Article 123(2) EPC - Claim 1

3.1 In feature a) of the present claim 1, the "*at least one substantially metallic layer*" is required to be a layer of "*Ni*", "*NiCr*" (*i.e.* an alloy of Ni and Cr, with Ni as the major component) or "*Haynes 214 alloy*". The definition of the at least one layer in feature a) of present claim 1 is thus more specific than in feature a) of claim 1 as granted (see "*which includes nickel or a nickel alloy")*. The basis for this restricting amendment can for instance be found on page 25, lines 5 to 7 ("*all nickel*"); lines 6, 7, 13 and 24 ("*Ni/Cr alloy*"; "*80/20 by weight Ni/Cr*"; "*nichrome*"); and lines 13 to 21 ("*Haynes 214 Alloy*"). The sentence bridging pages 25 and 26, as well as examples 2 to 5, 11, 14 to 16, 23 and 24 (see table on page 33), disclose the use of layers of such materials having undergone a minor amount of oxidation as required by feature e).

3.2 Feature e)

3.2.1 The respondent argued that the insertion of this feature into claim 1 did not meet the requirements of Article 123(2) EPC since it was only disclosed in the application as filed in combination with the feature *"substantially free of any nitride".*

3.2.2 According to the sentence bridging pages 25 and 26 of the description, at least one of the nickel-containing metallic layer(s) must be present in substantially unoxidized form, or *"have undergone only a* ***minor amount of oxidation***", and is "***preferably*** *substantially free of*

nitride to maximise chemical resistance" (emphasis added by the board). This feature *"substantially free of nitride"* is thus not presented as being mandatory in the case of a slightly oxidised metallic layer. Moreover, in claim 1 according to the present request feature a) has been restricted to metallic layer(s) of *"Ni"*, *"NiCr"*, or *"Haynes 214 alloy"*, *i.e.* to materials which all contain more than 10% by weight nickel, in accordance with what is stated in the paragraph bridging pages 23 and 24 and in the sentence bridging pages 25 and 26 of the application as filed.

3.2.3 Furthermore, there is no cogent evidence elsewhere in the description that the feature *"substantially free of any nitride"* must be present. The passage from page 24, line 20 to page 25, line 4 makes it clear that it is in order to be *"sufficiently chemically resistant to satisfy most needs"*, that the nickel containing layer(s) must be substantially free of nitride. However, as pointed out by the appellant, not all applications of the claimed coated glass products require a particularly high resistance against chemical attacks. Since claim 1 requires no particular level of chemical resistance, there is no necessity to include therein the particular feature *"substantially free of nitride"* which is disclosed to bring about said sufficient chemical resistance satisfying most needs. The other technical feature mentioned in the quoted passage on page 24, namely that a minor amount of oxidation may be tolerated in the nickel-containing layer, is not presented as being in a necessary relationship with the requirement of freeness of any nitride. The requirement, in the summary of the invention (page 12, lines 21 to 22), for the nickel-containing layer to be *"free of any*

nitride" is made less absolute by the quoted statements on pages 24 to 26, but is not contradicted by them as alleged by the respondent. In the embodiments shown in Figures 1A to 4B and 6, and referred to in the corresponding passages in the description (see legend on pages 20 and 21; pages 26 and 27), and in the examples 2 to 5, 11, 14 to 16, 23 and 24, an oxidized nickel-containing layer is always presented as also being substantially free of any nitride. However, the board considers that the amendment in question is properly based on the application since there is an unambiguous disclosure of the claimed combination of features which is not in contradiction with the rest of the application. The requirement of Article 123(2) EPC is thus met, even if the examples and drawings relate to further limited, preferred embodiments of the invention.

3.2.4 The amendment consisting in the insertion of feature e) into claim 1 is thus not objectionable under Article 123(2) EPC despite the omission of the feature *"free of any nitride"*.

3.3 Feature c)

3.3 By virtue of the particular wording chosen (*"not … other than")*, which in the present case is comparable to a wording using the expression "consisting of", feature c) of claim 1 as amended according to the present request requires that the only metallic IR-reflecting layer(s) present in the layer system is (are) the one(s) referred to in feature a), *i.e.* the at least one substantially metallic layer(s) of Ni, NiCr or Haynes 214 alloy.

In the application as filed, layer systems comprising no silver layer are expressly presented as a **preferred** embodiment. The respondent argued that the authors of the application thus also considered layer systems comprising other IR-reflecting metallic layers besides the nickel-containing layer(s) to be encompassed. However, the use of metals other than nickel or nickel-containing alloys is not suggested in the passage of the application as filed dealing with the nature of the metal layer(s) to be deposited according to the invention (page 23, line 8 to page 24, line 9). This passage actually underlines the fact that the metal to be employed should be selected from the "rather narrow group" of nickel and alloys containing at least 10% by weight nickel. The teaching that layer systems comprising only these metals should be used is backed-up by the fact that none of the working examples 2 to 24 comprises a further metallic IR-reflecting layer besides the unoxidised or slightly oxidised nickel-containing layer(s). Since "Haynes 214" is a specific metallic material of high nickel content (see for instance page 5, lines 12 to 14 and page 25, lines 13 to 21), and is expressly mentioned as a material suitable for the metallic layer, its inclusion in feature c) does not add subject-matter extending beyond the content of the application as filed. Since the amendment consisting in the re-wording of feature c) finds a supporting basis in the application as filed, it is not objectionable under Article 123(2) EPC.

3.3 Summarising, the board concludes that the claim 1 as amended according to the first auxiliary request meets the requirement of Article 123(2) EPC.

4. Allowability under Article 123(3) EPC - Claim 1

The appellant has not raised objections under Article 123(3) EPC against the claims according to the first auxiliary request. Considering the restricting nature of the amendment to feature a), of the re-worded feature c) and of the additional incorporation of feature e), the board also considers that the claim is not objectionable on this ground.

5. In conclusion, it follows from the above that claim 1 according to the first auxiliary request meets the requirements of Articles 123(2) and (3) EPC.

6. The respondent raised a number of other objections in relation to claim 1 of the first auxiliary request, particularly as regards clarity under Article 84 EPC. Since these objections were only raised during oral proceedings (see paragraph IX above) and since the board finds it appropriate to remit the proceedings anyway (see paragraph 7.1 below), the board considers it expedient not to express any view on these objections.

7. Remittal

7.1 The decision under appeal only dealt with objections under Articles 123(2) and (3) EPC against claim 1. Under these circumstances the board, in exercising its discretionary power pursuant to Article 111(1) EPC, finds it appropriate to remit the case to the department of the first instance for further prosecution in accordance with the respondent's request.

7.2 In relation to this, the board observes the following:

7.2.1 Although independent claim 24 relates to a coated glass article *"according to claim 1"*, *i.e.* now comprising feature e) (minor amount of oxide), the corresponding preparation steps in its feature a) appear not to lead to a layer of (pure) Ni, NiCr or Haynes 214 with slight oxidation. The corresponding independent claim 28 of the application as filed contained no back-reference to another claim and appears to relate to different specific embodiments shown in Figures 5 and 5B.

7.2.2 The back-references in dependent claims 10, 12 to 23 and 25 to 27 appear not to have been amended correctly. In particular, claims 10, 12 to 16, 18 to 21 and 25 refer to themselves.

7.2.3 These observations are, however, only to be regarded as *obiter dicta.*

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Opposition Division for further prosecution.

The Registrar | The Chairman

C. Vodz | B. Czech