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**Datasheet for the decision  
of 13 January 2017**

**Case Number:** T 0988/14 - 3.2.01

**Application Number:** 08158475.7

**Publication Number:** 2011682

**IPC:** B60K6/387, F16D21/06,  
B60K6/485, F16D25/10, B60K6/405

**Language of the proceedings:** EN

**Title of invention:**

An apparatus for transmitting power to a transmission

**Patent Proprietor:**

Ford Global Technologies, LLC

**Opponent:**

ZF Friedrichshafen AG

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56, 84  
EPC R. 106  
RPBA Art. 13(1)

**Keyword:**

Novelty

Inventive step

Clarity

Admission of new line of argument (no)

Objection in respect of a procedural defect (dismissed)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0988/14 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 13 January 2017**

**Appellant:** Ford Global Technologies, LLC  
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**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**6 March 2014 concerning maintenance of the**  
**European Patent No. 2011682 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** C. Narcisi  
O. Loizou

## **Summary of Facts and Submissions**

I. European patent No. 2 011 682 was maintained in amended form by the decision of the Opposition Division posted on 6 March 2014. Against this decision an appeal was lodged by the Opponent and by the Patentee on 30 April 2014 and on 15 May 2014 respectively and the respective appeal fees were paid. The statement of grounds of appeal was filed by the Opponent on 1 July 2014 and by the Patentee on 15 July 2014.

II. Oral proceedings were held on 13 January 2017. Appellant I (Opponent) requested that the decision be set aside and the patent be revoked. Appellant II (Patentee) requested that the decision 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 one of the auxiliary requests 1 to 6 filed 20 December 2013, or of auxiliary requests 1a or 1b filed 15 July 2014 with the statement of grounds of appeal, or of auxiliary request 7 filed on 16 December 2016, the order of the auxiliary requests being 1,1a,1b, 2-7.

III. Granted claim 1 reads as follows:

"An apparatus for transmitting power to a transmission comprising a first source of rotary power (10) rotating about an axis (19), a second source of rotary power (14), first and second transmission input shafts (16, 18) and first and second clutches (60, 62), the apparatus including a clutch hub (50) driveably connected to the first power source (10) and the second power source (14), the first clutch (60) is secured to the clutch hub (50) for alternately closing and opening a drive connection between the first transmission input

shaft (16) and the clutch hub (50) and the second clutch (62) is secured to the clutch hub (50) for alternately closing and opening a drive connection between the second transmission input shaft (18) and the clutch hub (50), characterized in that a chamber (98) is formed around the first and second clutches (60, 62), the first power source is situated outside the chamber (98), and the second power source is an electric machine (14) having a rotor hub (44) supported for rotation within the chamber (98) and driveably connected to the first power source (10)."

Claim 1 of auxiliary request 1 differs from granted claim 1 in that the wording "driveably connected" is replaced by "permanently driveably connected".

Claim 1 of auxiliary request 1a differs from granted claim 1 in that the wording "driveably connected" is replaced by "continuously driveably connected".

Claim 1 of auxiliary request 1b differs from granted claim 1 in that the wording "driveably connected" is replaced by "fixedly driveably connected".

claim 1 of auxiliary request 2 differs from granted claim 1 in that the wording "a chamber is formed" is replaced by "a wet chamber is formed" and the wording "for rotation within the chamber" is replaced by "for rotation within the wet chamber".

Claim 1 of auxiliary request 3 differs from granted claim 1 in that the combined amendments according to claim 1 of auxiliary requests 1 and 2 are introduced.

Claim 1 of auxiliary request 4 differs from granted claim 1 in that the wording "a rotor hub (44) supported

for rotation within the chamber (98) and driveably connected to the first power source (10)" is replaced by "a rotor hub (44) supported for rotation within the chamber (98) and driveably connected to the first power source (10), wherein the apparatus further comprises an input cylinder (48) secured to the clutch hub (50) and an attachment (46) for releasably connecting the rotor hub (44) and the input cylinder (48).

Claim 6 of auxiliary request 4 differs from granted claim 1 in that the wording "for alternately closing and opening a drive connection between the second transmission input shaft (18) and the clutch hub (50), characterized in that" is replaced by "for alternately closing and opening a drive connection between the second transmission input shaft (18) and the clutch hub (50), wherein the first power source is a power shaft (10) and the second power source is an electric machine (14), wherein the power shaft (10) rotates about an axis (19), the electric machine (14) includes a rotor (12) supported for rotation about the axis (19), characterized in that a chamber (98) is formed around the first and second clutches (60, 62), the first power source is situated outside the chamber (98), and the second power source being the electric machine (14) has a rotor hub (44) supported for rotation within the chamber (98) and driveably connected to the first power source (10), wherein the first clutch (66) is driveably connected to the power shaft (10) and the rotor (12) for alternately closing and opening a drive connection between the first transmission input shaft (16) and at least one of the power shaft (10) and the rotor (12) and the second clutch (62) is driveably connected to the power shaft (10) and the rotor (12) for alternately closing and opening a drive connection between the

second transmission input shaft (18) and at least one of the power shaft (10) and the rotor (12)".

Claim 1 of auxiliary request 5 is identical with claim 1 of auxiliary request 4. Claim 6 was deleted.

IV. The Patentee's arguments may be summarized as follows:

The subject-matter of claim 1 is new over prior art D6 (EP-A1-1 777 426) since the features (i) (i.e. "the apparatus including a clutch hub (50) driveably connected to the first power source (10) and the second power source (14)") and (ii) (i.e. "a chamber (98) is formed around the first and second clutches (60, 62), the first power source is situated outside the chamber (98), and the second power source is an electric machine (14) having a rotor hub (44) supported for rotation within the chamber") are not known from D6. Indeed, feature (i) in conjunction with the further claimed features (e.g. "the first clutch (60) is secured to the clutch hub (50) for alternately closing and opening a drive connection between the first transmission input shaft (16) and the clutch (50) and the second clutch (62) is secured to the clutch hub (50) for alternately closing and opening a drive connection between the second transmission input shaft (18) and the clutch hub (50)") renders evident that the two power sources are constantly connected to the clutch hub 50, as opposed to the apparatus of D6. As to feature (ii), D6 does not clearly and unambiguously disclose a chamber according to said feature, for it is doubtful whether the constructional element attached to the housing by a screw (D6, figure 2) and located between the damper and the flywheel actually constitutes a separation wall delimiting a chamber.

Claim 1 of auxiliary requests 1, 1a and 1b was amended to include "permanently driveably connected", "continuously driveably connected" and "fixedly driveably connected" respectively, in order to clarify feature (i) and emphasize the difference to the apparatus of D6. These amendments all unequivocally and clearly imply that in the operational state of the power transmission a permanent connection of the first and second power sources to the clutch hub is established.

Claim 1 of auxiliary request 2 was amended to clarify that a "wet chamber" is formed, thus clearly and precisely delimiting feature (ii) over the power transmission apparatus of D6.

Claim 1 of auxiliary request 3 includes the amendments of claim 1 according to both auxiliary request 1 and auxiliary request 2 and therefore complies with the requirements of clarity.

The subject-matter of claim 1 of auxiliary request 4 is new over D5 (DE-A1-101 46 606), for feature (ii) is not known therefrom. In effect, figure 4 shows that the rotor hub of the electric machine is situated outside the chamber indicated (by dashed lines in figure 4) and that no closed chamber is provided. The description (see paragraph [0059]) also does not disclose or suggest a chamber according to feature (ii).

The subject-matter of claim 1 of auxiliary request 4 is inventive over the combination of D6 and D1 (EP-A1-1 714 817). These documents disclosing power transmission apparatuses implementing two entirely different power transmission concepts, their combination would not be obvious to the skilled person.



Claim 1 of auxiliary request 5 is identical with claim 1 of auxiliary request 4 and therefore, as discussed, also meets the requirements of novelty and inventive step.

The subject-matter of claim 6 of auxiliary request 4 is new over D6. In particular feature (iii) (i.e. "the second clutch (62) is driveably connected to the power shaft (10) and the rotor (12) for alternately closing and opening a drive connection between the second transmission input shaft (18) and at least one of the power shaft (10) and the rotor (12)") is not known from D6, since the clutch 7 (see D6, figures 1, 2) does not fulfil this feature.

The Opponent's new line of argument, based on D5 and D6, concerning lack of inventive step of claim 1 of auxiliary request 5 (same claim 1 as in auxiliary request 4), was filed late and should not be admitted into the appeal proceedings. In effect, auxiliary request 5 was filed already during opposition proceedings and was reiterated in the Patentee's response to the Opponent's statement of grounds of appeal. The arguments relating to novelty and inventive step were also given in said response (same arguments as for claim 1 of auxiliary request 4). All these facts were known to the Opponent since a long time and new arguments relating thereto were not any more submitted by the Patentee. Consequently, the new line of argument submitted after deliberation of the Board, and just before the closure of the debate, is clearly late filed.

The Opponent should also not be allowed to file a new line of argument on inventive step based on common

general knowledge at a stage at which the oral proceedings were nearly terminated.

V. The Opponent's arguments may be summarized as follows:

The subject-matter of claim 1 is not new over D6, given that the disputed features (i) and (ii) are known from D6. The term "driveably connected to" in feature (i) evidently merely indicates the possibility of establishing (or not) a drive connection in a corresponding operating mode of the power transmission apparatus. Certainly it does not mean that a "permanent" structural connection exists, for then another term would be used (see e.g. the term "secure", also used in claim 1). As to feature (ii), said constructional element depicted in figure 2 of D6 (located between the flywheel and the damper) constitutes a separating wall delimiting a chamber. This can be inferred from the fact that it also serves the purpose of supporting a rotational bearing disposed at its lower end portion.

The subject-matter of claim 1 of auxiliary requests 1, 1a, 1b and 2 was amended in a way such as to include unclear and ambiguous terms (see e.g. "permanently driveable connection"). The same applies to claim 1 of auxiliary auxiliary request 3 (which combines the amendments of both auxiliary request 1 and 2).

The subject-matter of claim 1 of auxiliary request 4 is not new over D5 since disputed feature (ii) is likewise known therefrom. Indeed, it is explicitly disclosed in D5 (see paragraph [0059] in conjunction with figure 4) that the chamber shown in figure 4 (see dashed lines) could be modified such as to also include the rotor hub 190 (see figure 4) of the electric machine. This is

obviously achieved by shrinking ("Schrumpfen") the size of the apparatus and making it smaller.

The subject-matter of claim 1 of auxiliary request 4 is not inventive over D6 and D1. Said subject-matter differs from the apparatus of D6 in that "the apparatus further comprises an input cylinder (48) secured to the clutch hub (50) and an attachment (46) for releasably connecting the rotor hub (44) and the input cylinder (48)" (hereinafter designated as feature (iv)). This feature would be obvious for the skilled person in view of D1, which discloses that the rotor of the electric machine is connected to the input side of the clutch (i.e. clutch hub) and also suggests that the damper and the electric rotor are releasably coupled to the input cylinder (see D1, figure 2).

The subject-matter of claim 6 of auxiliary request 4 is not new over D6. It follows from figures 1 and 2 that (as expressed in the Board's preliminary view in the communication of the Board pursuant to Article 15 (1) RPBA) the second clutch 7 fulfils the requirements of disputed feature (iii), given that in an operating mode of the power transmission apparatus wherein the first clutch 8 is already engaged, a driving connection between the transmission input shaft 18 and the power shaft 10 is closed (and opened) by engaging (and releasing) the second clutch 7.

The line of argument based on D5 (as closest prior art) and D6 concerning lack of inventive step of claim 1 of auxiliary request 4 (and claim 1 of auxiliary request 5) should be admitted to the appeal proceedings. These arguments are not late filed since they were submitted in response to the opinion of the Board expressed during the oral proceedings. Moreover, equal treatment

of the parties imposed that these arguments be admitted into the proceedings, for the Patentee did not submit its arguments relating to claim 1 of auxiliary request 4 (or 5) with the statement of grounds of appeal but only later. The new line of argument likewise did not add to the complexity of the discussion and did not affect procedural economy.

In any case the Opponent should be allowed to present a new line of argument on inventive step based on common general knowledge.

VI. During the oral proceedings the Opponent filed in writing (in German language) the following objection pursuant to Rule 106 EPC:

"Es wird die Rüge erhoben, dass im Beschwerdeverfahren ein schwerwiegender Verstoß gegen Art. 113 EPÜ (rechtliches Gehör) vorliegt. Begründung:  
Zur Patentfähigkeit des Anspruchs 1 des Hilfsantrags 5 wurde gegenüber der D5 Neuheit entschieden.  
Entgegen der Ansicht der BK muss dann auch zur erfinderischen Tätigkeit verhandelt werden, weil die D5 sich als nächstliegender St.d.T. erwiesen hat (größtmögliche merkmalsmäßige Übereinstimmung aller im Verfahren befindlichen Dokumente) und zum Unterscheidungsmerkmal einen Hinweis für alternative Ausführungsform enthält. Dies ist ohne weiteres ersichtlich und stellt keine neue Situation dar. Der Hinweis in D5 [0059] weist auf eine Lösung, die in D6 (Figuren) verwirklicht ist, was dem ersten Anschein nach ersichtlich ist. Es sind auch im Rahmen der Amtsermittlung solche offensichtlichen Sachverhalte zu berücksichtigen und nicht mit Hinweis auf verspätetes Vorbringen bereits abzulehnen. Neuheit und erf. Tätigkeit sind eng verzahnt und bauen argumentativ

aufeinander auf. Daher ist die Argumentation D5 + D6 zu berücksichtigen."

### **Reasons for the Decision**

1. The appeals are admissible.
  
2. The subject-matter of granted claim 1 (main request) is not new over D6 (Article 54 EPC). In the Board's view both disputed features (i) and (ii) (see above, point IV) are known from D6. As to feature (i), the term "driveably connected" cannot be construed as meaning that the first and second power sources are constantly and permanently connected to the clutch hub. In the present technical context of a power transmission apparatus said term can only be understood as defining a functional or operating connection, being closed or open according to the specific operating mode. Such a driving connection is disclosed in D6, where the second clutch 7 is apt for closing and opening a driving connection between the clutch hub 10, 11 and the electric rotor 21, and the input power shaft 2 (first power source ) is (fixedly) secured to the clutch hub (figures 1,2).

As to feature (ii), it is considered that the skilled person would regard said constructional element (figure 2), located between the damper and the flywheel (and fixed at its upper end by screw means to the housing), as being a separating wall delimiting a chamber. In particular, the skilled person reading D6 and having to put its technical teaching into effect, would come to no other conclusion, for otherwise no stable structural configuration could be provided in conjunction with the rotational bearing (illustrated in figure 2) located at

the lower end portion of said constructional element (e.g. a metal strut or strip, as suggested by the Patentee, would in no way provide sufficient stability in a structure having rotational symmetry and including a rotational bearing). Therefore, the question concerning interpretation of said constructional element is certainly not one of probability or likelihood (i.e. which interpretation is more plausible) but merely one of understanding of the document by the skilled person. In addition, claim 1 does not require that the chamber (defined in figure 2 by the housing and said constructional element) be completely closed or sealed and figure 2 (of D6) clearly shows that the chamber encloses the first and second clutches 7,8 and the electric rotor hub 21, whilst the first power source is located outside. Hence feature (ii) is also disclosed in D6.

3. The subject-matter of amended claim 1 of auxiliary requests 1, 1a, 1b, 2 and 3 does not comply with the requirement of clarity (Article 84 EPC). As to claim 1 of auxiliary request 1, 1a, 1b it is noted that none of the terms "permanently driveably connected", "continuously driveably connected" and "fixedly driveably connected" succeeds in giving an unambiguous definition of the driving connection. In effect, the term "driveably connected" already entails the possibility of some object being driven or not (by a power source), whilst "permanently", "continuously" and "fixedly" exclude said option of not being driven. Hence, a contradiction in terms results from said amendments. As to claim 1 of auxiliary request 2, the wording "wet chamber" is not defined in the claim and is evidently unclear, for it does not have an unambiguous meaning deducible from common general knowledge in the specific technical field of power

transmissions. For these same reasons claim 1 of auxiliary request 3 is likewise not clear, since it includes both the amendments of claim 1 of auxiliary request 1 and of auxiliary request 2.

4. The subject-matter of claim 1 of auxiliary request 4 is new over D5, as said feature (ii) (see point IV) is not derivable therefrom. In particular, the chamber illustrated (by dashed lines) in figure 4 of D5 (see paragraph [0059]) clearly does not enclose the electric rotor 190. Nevertheless it is stated in paragraph [0059] that "it appears to be technically feasible to design a combination of an electric machine with a double-clutch and to dispose it into a gearing housing indicated by dashed lines in figure 4, said combination having axially contiguously disposed clutches and being radially more compact than the combination shown in figure 4. For instance, a starter-generator for a crankshaft could be provided, having axially contiguously disposed rotor and stator, thus saving radially available installation space". In the Board's view this passage clearly has to be considered in its entirety and its first portion cannot be read in isolation. The first portion constitutes anyway a mere hint at possible modification, without any actual disclosure as to how (by which constructional features) this modification could be implemented. Certainly, contrary to the Opponent's view, mere "shrinking" of the structure is neither explicitly nor implicitly disclosed or even suggested. This is confirmed by the following sentence in the passage, which proposes a quite different solution (coaxial arrangement of electric rotor and stator), however without stating how the entirety of the constructional parts of the embodiment (shown in figure 4) would be affected by said modification. Therefore, given that a further

embodiment is merely suggested or hinted at in said paragraph of D5, no sufficient details being indicated as to its actual configuration and structure (thus not allowing a comparison with the subject-matter of claim 1), the claimed subject-matter is new over D5 (Article 54 EPC).

5. The subject-matter of claim 1 of auxiliary request 4 is inventive over D6 and D1 (Article 56 EPC). This line of argument was presented by the Opponent in writing and explicitly referred to during oral proceedings. According to this line of argument the only difference between the power transmission apparatus of D6 and the claimed subject-matter resides in said feature (iv) (see above, point V). Contrary to the Opponent's view, this feature is not rendered obvious by the combination of D6 with D1. Both parties agree, that implementation of this feature (as allegedly suggested by D1) into the apparatus of D6 necessarily implies that the electric rotor be removed from the output side of the second clutch 7 (as shown in D6) and be connected to the input side (see clutch hub 10, 11 in figures 1,2 of D6) of the clutch. The Board concurs with the Patentee's view, that starting from D6 such a modification would not be obvious for the skilled person. In effect, an entirely different power transmission apparatus would thereby be obtained, wherein both power sources are directly coupled to the input power shaft, whereas according to D6 only the first power source is coupled to the input power shaft and the second power source (electric rotor) is coupled to the second transmission input shaft (see reference sign 4 in figures 1, 2 in D6). Such modifications would entail major structural changes implying a completely different way the input power from both power sources is transmitted to the transmission input shafts. The skilled person would



have no reasons and no incentive to perform such sweeping changes. Moreover, also a necessarily considerably different automated control of the power transmission would be needed, given that the power sources would be connected in an entirely different way to the transmission input shafts. In conclusion, the skilled person would not obviously combine D6 with D1.

6. The subject-matter of claim 6 of auxiliary request 4 is not new over D6, for disputed feature (iii) is likewise known from D6. Indeed, contrary to the Patentee's opinion, the second clutch 7 (see figures 1 and 2) fulfils the requirements of feature (iii), because it is "driveably connected" to the power shaft 2 (by means of first clutch 8, being itself "driveably connected" to the first power source) and to the rotor 21 (direct coupling by means of connecting means 16, 17 , 18, 19, 20), and further it is apt for alternately closing and opening a drive connection between the second transmission input shaft 4 and the power shaft 2 (in particular when the first clutch 8 is engaged). Hence, Article 54 EPC is not complied with.
7. Accordingly, auxiliary request 4, which corresponds to the request allowed by the Opposition Division in the appealed decision, fails for lack of novelty of the subject-matter of claim 6.
8. Auxiliary request 5 differs from auxiliary request 4 only by the deletion of independent claim 6. Claim 1 of auxiliary request 5 thus being identical to that of auxiliary request 4, during oral proceedings the parties were informed by the Chairman, who had previously ascertained, having asked the parties, that everything had been said in respect of novelty and inventive step of the subject-matter of claim 1, that

auxiliary request 5 appeared to form a suitable basis for the maintenance of the patent in amended form.

8.1 The Opponent then requested that a new line of attack on inventive step be discussed, based on the combination of documents D5 and D6. The Board, after having heard the respective arguments of the parties, in particular after discussion of the patent proprietor's objection not to admit the new line of attack because filed late, decided to exercise its discretionary power according to Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal) not to admit the Opponent's new line of attack on inventive step against claim 1 of auxiliary request 5 based on D5 and D6.

8.2 It is firstly noted that auxiliary requests 4 and 5 were already submitted during opposition proceedings and D5 was already submitted with the notice of opposition. In opposition proceedings, however, the Opponent never relied on D5 to attack novelty of the claimed subject-matter, or as the starting point for an attack on inventive step. In fact, the objection of lack of novelty of claim 1 of auxiliary request 4 (this claim being, as stated above, identical to claim 1 of auxiliary request 5) over D5 was only submitted with the Opponent's statement of grounds of appeal. In its reply thereto, the Patentee submitted related arguments on novelty over D5. The Opponent, however, did not submit in response any arguments in writing, in case D5 would not be prejudicial to the novelty of the subject-matter of claim 1, but requested to submit its case on inventive step starting from D5, and combining it with D6, only during the oral proceedings, after the Chairman had ascertained that everything in respect of novelty and inventive step of claim 1 had been said and

after the Board had come to a conclusion on novelty over D5. Under these circumstances, the request of submitting a line of attack on inventive step starting from D5 and combining it with D6, not only constitutes a substantial amendment to the Opponent's case, which accordingly is only admissible at the Board's discretion pursuant to Article 13(1) RPBA, but also constitutes an unjustified belated response to the Patentee's arguments on novelty in respect of D5. In particular, it is not justified to wait for the Board to come to a conclusion on novelty, based exclusively on the Patentee's arguments that were already presented in writing and thoroughly discussed, for amending the Opponent's case. This rather amounts in finding a belated way of tackling with the conclusion of the Board.

9. The Board also rejected the request of the Opponent of submitting a further new line of argument on inventive step based on D5 and common general knowledge. The reasons for not admitting the previous request (see above paragraph 8) also apply, *mutatis mutandi*, to this request. In addition, it is noted that this request was submitted after the Board had deliberated on, and decided not to admit, the new line of argument on inventive step based over D5 and D6. Accordingly, this request was filed at an even later stage than the previously filed request. The Board, seeing no justification for this piecemeal presentation of the Opponent's case during the oral proceedings, decided, having regard to the current state of the oral proceedings (close to its end), to exercise its discretion pursuant to Article 13(1) RPBA not to admit this request.

10. The Board dismissed the objection of the Opponent under Rule 106 EPC, which related to an alleged violation of the right to be heard (Article 113(1) EPC) and which justification can be summarized as follows:

D5 was used to attack the novelty of the subject-matter of claim 1. After the Board found that D5 was not prejudicial to the novelty of this subject-matter and had established that there was a distinguishing feature, then it was necessary to discuss inventive step starting from D5 to establish whether the distinguishing feature would justify an inventive step. This was further justified by the fact that D5 already suggested alternative solutions and D6 disclosed the distinguishing feature, and by the fact that the Board had a duty of examination of its own motion.

The Board notes, however, that the Opponent was granted the right to be heard under article 113(1) EPC in respect of the admissibility of its new line of attack on inventive step combining D5 with D6, since the issue of admissibility was discussed with both parties before deliberation. Only after discussion and subsequent deliberation the Board announced that it intended to exercise its discretion not to admit the new line of attack. Therefore the Board sees no violation of the Opponent's right to be heard. In fact, the Opponent's objection relies on the false assumption that a party has a right to have considered by the Board, at any time during appeal proceedings, an amended case on inventive step based on a prior art document if an attack based on novelty on that same document is judged not successful by the Board. This does not hold true since procedural limitations are laid down, in particular in Article 13(1) RPBA. The Board notes also that the Opponent erroneously misunderstood the not

admitting of its request, i.e. the exercise of the Board's discretion not in its favour, for a violation of its right to be heard.

Finally, it has to be noted that, as concerns the line of attack based on D5 and common general knowledge, which was also not admitted into the appeal proceedings, the Opponent did not allege a violation of its right to be heard.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent in amended form on the basis of the following:

Description:

columns 1-7 of the patent as granted

Claims:

No 1-9 of auxiliary request 5 filed with letter dated 20 December 2013

Drawings:

figures 1-3 of the patent as granted

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated