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**Datasheet for the decision
of 19 December 2018**

Case Number: T 0589/15 - 3.3.03

Application Number: 05791246.1

Publication Number: 1793994

IPC: B29C55/28

Language of the proceedings: EN

Title of invention:

POLYLACTIC ACID BLOWN FILM AND METHOD OF MANUFACTURING SAME

Patent Proprietor:

PLASTIC SUPPLIERS, INC.

Opponent:

Infiana Germany GmbH & Co. KG

Relevant legal provisions:

EPC Art. 54, 56
RPBA Art. 13(1), 13(3)

Keyword:

Novelty - (all requests: yes)
Inventive step - (main request and auxiliary requests 2 to 8:
no)
Late-filed auxiliary request 1 - admitted (no)



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Case Number: T 0589/15 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 19 December 2018

Appellant: Infiana Germany GmbH & Co. KG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 January 2015 concerning maintenance of the
European Patent No. 1793994 in amended form.**

Composition of the Board:

Chairman D. Semino
Members: O. Dury
W. Ungler

Summary of Facts and Submissions

I. The appeal by the opponent lies from the interlocutory decision of the opposition division concerning maintenance of European patent No. 1 793 994 in amended form according to the main request filed during the oral proceedings on 18 December 2014 and an amended description.

II. Claims 1 and 14 of the granted patent read as follows:

"1. A method of making a polylactic acid (PLA) blown film comprising:

(a) providing dry pellets of PLA;

(b) melting the pellets to form a molten mass at a first desired viscosity value or range of values;

(c) increasing the viscosity of the molten mass to a second desired viscosity value or range of values;

(d) forming a bubble from the resulting molten mass;
and

(e) collapsing the bubble to form a film, wherein the plasticizer is lactide and the PLA blown film comprises less than 10 percent of plasticizer."

"14. A PLA blown film obtainable by the process according to any one of Claims 1-13."

Granted claims 2-13 were dependent on granted claim 1.

III. A notice of opposition to the patent was filed requesting revocation of the patent in its entirety.

IV. The contested decision was in particular based on the **main request** filed during the oral proceedings on 18 December 2014.

Claims 1-12 and claim 13 of said main request were identical to granted claims 1-12 and granted claim 14, respectively.

V. In that decision the following documents were *inter alia* cited:

G3: US 5 502 158

G8: Polymeric Materials, Carl Hanser Verlag, München, 2001, pages 52-54

Reference was further made to a declaration made by Mr. E.C. Tweed, co-inventor of the patent in suit (decision: section 4 of the section Facts and Submissions), which contained two annexes, in particular:

G9B: Plastic Films, Technology and Packaging applications, K.R. Osborn and W.A. Jenkins, pages 42-57

VI. In the contested decision, the opposition division held *inter alia* that the main request was novel over document G3 and was inventive starting from examples 36 and 37 of G3 as closest prior art.

Regarding novelty, it was considered that G3 failed to disclose the specific combination of features mentioned in operative claim 13, i.e. said subject-matter could

only be arrived at by combining different passages of G3 which were not disclosed in combination therein (decision: section 4.1 of the reasons).

In respect of the inventive step, the PLA blown film according to claim 13 of the main request differed from the one prepared in example 37 of G3 in that it comprised less than 10 percent lactide as plasticiser.

The technical problem could not be formulated as reducing the detrimental effect of the migration of plasticisers on packaged goods such as food-stuff, as argued by the opponent, because that problem was not derivable from the patent in suit. Rather, the objective technical problem resided in the provision of an alternative PLA blown film (decision: section 5.2.2 of the reasons).

Although G3 disclosed that the plasticiser could be used in an amount as low as 1 weight percent, the skilled person would not be motivated to reduce the amount of plasticiser in examples 36 and 37 of G3 since D3 taught that he could, by doing so, impair the "beneficial effects" obtained in these examples (see section 5.2.3.1 of the reasons of the decision). Besides, example 34 of G3 taught to increase the amount of plasticiser from 5 to 15 percent and examples 40-41 taught an amount of plasticiser of 20 percent (see section 5.2.3.2 of the decision), which were both outside the range of lactide defined in the operative claims.

Also, the method according to claim 1 of the main request differed from the method according to example 37 of G3 in that the PLA blown film comprised less than 10 percent of plasticiser and in that

step (c) according to operative claim 1 was not disclosed in G3. However, since the feature "less than 10 percent of plasticiser" already conferred an inventive step over G3 for the reasons outlined above in respect of operative claim 13, it was immaterial whether or not the feature of step (c) might be rendered obvious by a combination of G3 and G8, as put forward by the opponent (see section 5.2.4 of the decision).

VII. The opponent (appellant) lodged an appeal against the above decision and requested that the decision of the opposition division be set aside and the patent be revoked.

VIII. In the reply to the statement of grounds of appeal the patent proprietor (respondent) requested that the appeal be dismissed (**main request**) or, in the alternative, that the patent be maintained in amended form according to any of the **first to seventh auxiliary requests** filed therewith.

Claim 1 of each of said first to seventh auxiliary requests was identical to claim 1 of the main request.

Claim 13 of each of said first to third auxiliary requests was identical to claim 13 of the main request.

Claim 13 of each of the fourth to the seventh auxiliary requests read as follows (as compared to claim 13 of the main request, additions are indicated in **bold**, deletions in ~~strikethrough~~):

"13. A PLA blown film ~~obtainable by the process according to any one of Claims 1-13~~ **comprising less than 10 percent of plasticizer, wherein the plasticizer**

is lactide."

- IX. In a communication accompanying the summons to oral proceedings dated 13 July 2018 issued by the Board, issues to be discussed at the oral proceedings were specified.
- X. Third party observations were filed with letter of 5 December 2018.
- XI. During the oral proceedings which were held on 19 December 2018 in the presence of both parties, the respondent, after the Board had announced its conclusion that the main request was not inventive over G3, filed a **new auxiliary request 1** (12 claims), whereby the operative first to seventh auxiliary requests were renumbered auxiliary requests 2 to 8.
- Claims 1-12 of said new auxiliary request 1 were identical to claims 1-12 of the main request filed during the oral proceedings on 18 December 2014.
- XII. The appellant's arguments, as far as relevant to the present decision, were essentially as follows:

Main request

(a) Article 54 EPC

The subject-matter of operative claim 13 could be arrived at by combining claims 1, 4 or 7, 41, 46 and 53 of G3.

(b) Article 56 EPC

It was agreed with the opposition division that the

subject-matter of operative claim 13 differed from the PLA blown film prepared in example 37 of G3, which constituted the closest prior art, in that the film contained less than 10 percent of plasticiser, which was lactide.

Considering that no evidence was on file showing that a technical effect was related to that distinguishing feature, the problem solved by operative claim 13 over the closest prior art could only reside in the provision of a further blown film in alternative to the one of example 37 of G3. In that respect, the problem of migration of the plasticiser was not derivable from the patent in suit and could not be taken up in the formulation of the problem to be solved.

However, G3 itself taught that lactide in an amount as low as 1 wt.% could be used as plasticiser. The statement relied upon by the opposition division to conclude that D3 taught away from using amounts of lactide of less than 10 percent was not directed to the production of blown film but only to the compounding of PLA in an extruder. Therefore, considering the information provided in G3 as a whole, it was obvious for the skilled person to solve the above defined problem by using lactide in an amount of less than 10 percent. There was no evidence on file, nor it could be derived from the information given in G3 that it was not possible to prepare a blown film with a PLA composition comprising less than 10 percent lactide as plasticiser using the process according to example 37 of G3, as argued by the respondent during the oral proceedings before the Board.

In view of the above, the subject-matter of operative claim 13 was not inventive.

Auxiliary request 1 - Admittance

(c) Auxiliary request 1 was late-filed and should have been filed either with the statement of grounds of appeal or in direct reply to the Board's communication if it had been the respondent's intention to defend the method claims only. In addition, it was not clear how auxiliary request 1 could suitably overcome the inventive step objection retained against the main request. Therefore, auxiliary request 1 should not be admitted into the proceedings.

Auxiliary requests 2 to 8 - Inventive step

(d) In view of claim 13 of each of auxiliary requests 2 to 8, the same arguments were valid in respect of the lack of inventive step of each of auxiliary requests 2 to 8 as outlined above for the main request.

XIII. The respondent's arguments, as far as relevant to the present decision, may be summarised as follows:

Main request

(a) Article 54 EPC

The specific combination of features according to operative claim 13 was not disclosed directly and unambiguously in G3 and could only be arrived at after artificially combining various passages of G3. Therefore, the subject-matter of operative

claim 13 was novel over G3.

(b) Article 56 EPC

It was agreed with the opposition division's findings regarding the choice of the closest prior art (example 37 of G3) and the identification of the distinguishing feature of operative claim 13 (less than 10 percent plasticiser, which was lactide).

The objective problem solved over the closest prior art was to provide an improved PLA blown film, whereby the improvement resided in the lower amount of lactide contained therein. In that respect, it should be taken into account that before the priority date of the patent in suit, the skilled person did not know how to produce PLA blown films comprising less than 10 percent plasticiser, which was lactide. Considering that it was known in the art that lactides were a drawback for such films, the skilled person had always tried to produce such films but did not know how to proceed. It was only with the specific process defined in operative claim 1 that such films could be made for the first time.

It was agreed with the opposition division's finding according to which G3 taught away from using amount of lactide as plasticiser of less than 10 percent. In particular, the general teaching at column 16, lines 47-51 of G3 regarding the suitable amounts of plasticiser to be used was not specifically directed to the production of blown films. Further considering that G3 was not limited to such films, it could not be concluded that the

whole range of plasticiser indicated at column 16 of G3 mandatorily applied to all the embodiments disclosed therein, in particular to the blown PLA film made in examples 37 of G3. In addition, there was no evidence on file supporting the appellant's argument according to which it would be possible to prepare a blown film using the process according to example 37 of G3 but using less than 10 percent lactide as plasticiser. In that respect, the process used in example 37 was a usual blow moulding process as illustrated in G9B but not a process according to the patent in suit, which was in particular characterised in that it contained step (c) according to operative claim 1, which was crucial in order to render possible the preparation of PLA films with less than 10 percent lactide as plasticiser by blow moulding.

For those reasons, the subject-matter of operative claim 13 was inventive.

Auxiliary request 1 - Admittance

(c) Auxiliary request 1 was filed at the first opportunity, when the respondent had been confronted with the Board's negative conclusion regarding the inventive step of the main request. In particular, since both the decision of the opposition division and the preliminary opinion of the Board as well (section 8.4.2.a) were in favour of the respondent, there was no reason for the respondent to submit such a request before. In addition, since auxiliary request 1 consisted in claims 1-12 of the main request, no new issue would have to be discussed and the appellant could not be taken by surprise. For those reasons, auxiliary

request 1 should be admitted into the proceedings.

Auxiliary requests 2 to 8 - Inventive step

(d) In respect of the inventive step of each of auxiliary requests 2 to 8, the same arguments were valid as outlined for the main request.

XIV. The appellant (opponent) requested that the decision under appeal be set aside and that the European patent be revoked. Furthermore, it requested that the new auxiliary request 1 not be admitted into the proceedings.

The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative that the patent be maintained in amended form according to the auxiliary request 1 filed during the oral proceedings before the Board, or according to any of auxiliary requests 2 to 8 (corresponding to the first to the seventh auxiliary requests filed with the patent proprietor's rejoinder to the statement of grounds of appeal).

Reasons for the Decision

Main request

1. Novelty over G3

1.1 The sole novelty objection put forward by the appellant was in view of G3 and was directed to the subject-matter of claim 13 of the main request.

- 1.2 Claim 13 of the main request, which is directed to a PLA blown film defined using the product-by-process claim formulation "obtainable by the process according to any one of Claims 1-12", is nevertheless directed to the PLA blown film *per se*. The by-process element of that claim can only be given some weight if it were to be shown to be reflected in the product itself. Considering that there is no evidence on file showing that the process of claim 1 is reflected in any way in the product so obtained other than in the content and type of plasticiser specified in claim 1, namely lactide, operative claim 13 encompasses any PLA blown film comprising less than 10 percent lactide, as argued by the appellant (section 5.1 of the statement of grounds of appeal). That conclusion was not contested by the respondent.
- 1.3 According to the contested decision (section 4.1.1), novelty over G3 was acknowledged because G3 failed to disclose the specific combination of features mentioned in operative claim 13, i.e. said subject-matter could only be arrived at by combining different passages of G3 which were not disclosed in combination therein.
- 1.4 In section 5.2 of the statement of grounds of appeal, the appellant argued anew that the subject-matter of operative claim 13 could be arrived at by combining claims 1, 4 or 7, 41, 46 and 53 of G3. However, the appellant did not explain why the opposition division's decision was wrong in concluding that such a combination of claims was not directly and unambiguously disclosed in G3.
- 1.5 In that respect, the Board agrees with the opposition division that the specific combination of features according to operative claim 13 may only be arrived at

after performing a series of selections within the ambit of G3, in particular regarding the combination of various passages of G3 directed to the features "blown film" (claim 53; column 19, line 45; column 21, line 40), "PLA polymer" (claims 6-10; column 12, lines 10-25), "lactide modifier/additive" (claim 41; column 15, line 60) and "amount of lactide of less than 10 percent" (claim 46; column 16, lines 47-51). Therefore, the specific combination of features according to operative claim 13 is not directly and unambiguously disclosed in G3.

1.6 In view of the above, there is no reason to deviate from the opposition division's decision according to which G3 does not anticipate the subject-matter of operative claim 13.

2. Article 56 EPC

2.1 Closest prior art

The parties agreed that the closest prior art document is G3, which was also considered in the contested decision. The Board has no reason to deviate from that view. In addition, the blown film prepared in example 37 of G3 (column 34, lines 14-24; Table 7) is particularly relevant for operative claim 13 (blown film defined by a product-by-process formulation).

2.2 Distinguishing feature over example 37 of G3

It was also not in dispute between the parties that the subject-matter of operative claim 13 differs from example 37 of G3 only in that the amount of plasticiser, which is lactide, in the blown film should be less than 10 percent. In that respect the blown film

according to example 37 of G3 contained 14.6 wt.% lactide (Table 7).

2.3 Problem effectively solved

2.3.1 During the oral proceedings before the Board, the respondent argued that the problem solved over the closest prior art by the subject-matter of claim 13 resided in the provision of improved blown films whereby the improvement consisted in that those films comprised less lactide so as to reduce the detrimental effect of the migration thereof, which was derivable from paragraph 3 of the patent in suit. During the oral proceedings before the Board, the respondent further pointed out that, before the priority date of the patent in suit, the skilled person would not have been in a position to prepare PLA blown films containing less than 10 percent lactide as plasticiser. Therefore, in the circumstances of the present case, the problem to be solved could be based on the reduced amount of lactide present in the blown film.

2.3.2 However, it is agreed with the opposition division that the problem of reducing the migration of lactide is not derivable from paragraph 3 of the patent in suit (section 5.2.2 of the reasons of the decision: first paragraph) and can, thus, not be taken up in the formulation of the problem to be solved.

2.3.3 In addition, according to the case law, the problem should be formulated in such a way that it contains no pointer to the solution, since including part of the solution offered by an invention in the statement of the problem necessarily had to result in an ex post facto view being taken of inventive step when the state of the art was assessed in terms of that problem (Case

Law of the Boards of Appeal of the EPO, 8th edition, 2016: I.D.4.3.1). In the present case, the feature "less than 10 percent plasticizer, which is lactide", is part of the solution proposed by the subject-matter of operative claim 13 (as indicated in step (e) of claim 1, which is referred to in claim 13 via the product-by-process formulation). Therefore, the problem cannot be formulated with an explicit mention of that feature, contrary to the respondent's view.

2.3.4 It was not contested by the respondent, in particular during the oral proceedings before the Board, that there was no comparison on file between a blown film according to operative claim 13 and a blown film prepared according to example 37 of G3 (in fact, the patent in suit does not even comprise a single example illustrating the subject-matter of either operative claim 1 or claim 13). In particular, there is no evidence on file showing an effect which is attributable to the feature distinguishing the subject-matter of operative claim 13 from the closest prior art, namely an amount of plasticiser of less than 10 percent, which is lactide. Therefore, in the absence of any demonstrated improvement, the technical problem effectively solved over the closest prior art by operative claim 13 can only be held to reside in the provision of a further blown film in alternative to the one prepared in example 37 of G3.

2.4 Obviousness

2.4.1 The question remains to be answered if the skilled person, desiring to solve the problem identified as indicated in section 2.3.4 above, would, in view of the closest prior art, possibly in combination with other prior art or with common general knowledge, have

modified the disclosure of the closest prior art in such a way as to arrive at the claimed subject matter.

2.4.2 In that respect, G3 itself teaches in a general manner that lactides may preferably be used as plasticisers (e.g. column 15, lines 59-60) and that suitable amounts are as low as 5 wt.% or even 1 wt.% (column 16, lines 47-51). Although it is correct that the latter passage of G3 is not specifically related to blown film and that G3, as a whole is not limited to blown films, as argued by the appellant during the oral proceedings before the Board, it remains that the general teaching of G3 is that lactide as plasticizer may be used in amounts lower than 10 percent. Therefore, the skilled person aiming at providing an alternative blown film to the one prepared in example 37 of G3 would have contemplated using different amounts of lactide as plasticiser, including amounts of less than 10 percent as defined in operative claim 13 (by reference to claim 1).

2.4.3 The respondent argued that the skilled would have been deterred from using amounts of lactide of less than 10 percent because examples 34-39 of G3 taught away therefrom.

However, in the Board's view, the sole drawbacks mentioned in examples 34-39 of G3 regarding the use of amounts of lactide below 10 wt.% are related to the coloration of the melt and to a loss in molecular weight of the PLA in the extruder, but not to the properties of the blown films, let alone to the impossibility of making PLA blown films (see e.g. G3: column 33, lines 22-39). It is further shown in G3 that the potential drawback on coloration in the extruder is not reflected any more in the blown film made with such

a composition (which is colourless according to G3: column 34, lines 16-18). In the light of those results, the indication at column 34, lines 32-33 of G3 that "the above results clearly show the beneficial effects of added lactide as modifier" is not seen to teach away from using amounts of lactides of less than 10 percent, in particular not in order to solve the above identified problem, which is to prepare alternative blown films to the one of example 37 of G3, contrary to both the respondent's and the opposition division's views.

The Board further considers that examples 34-39 do not show that it is not possible to prepare a blown film using less than 10 percent lactide as plasticiser. In particular, it was not shown by the respondent that the skilled person would have had any reason to conclude that a PLA composition comprising less than 10 percent lactide as modifier (such as that of example 34 of G3 containing 5.56 wt.% lactide) could not be used to prepare blown films. In that respect, the fact that the PLA blown films prepared in examples 40-41 of G3 were obtained using an amount of 20 percent lactide (column 34, line 51) is considered to constitute a mere embodiment illustrating the teaching of G3, but does not constitute an evidence that it is not possible to carry out the same process using lower amounts of lactide, in particular amounts of less than 10 percent.

- 2.4.4 During the oral proceedings before the Board, the respondent argued that it would not be possible to prepare a blown film using the usual blow moulding process used in G3, which was not disclosed therein as comprising a step (c) according to claim 1 of the main request, namely a step of increase in viscosity of the molten mass, which was crucial in order to prepare PLA

films comprising less than 10 percent lactide as plasticiser by blow moulding.

However, no evidence was provided by the respondent in that respect. Also, that argument had never been put forward by the respondent during the whole appeal proceedings until the day of the oral proceedings. Although that feature had been identified in the contested decision as potentially distinguishing the process according to operative claim 1 from the one according to example 37 of G3, no decision was taken whether or not that feature contributed to an inventive step of said claim 1 and that feature was not discussed in the assessment of the inventive step of operative claim 13 (see sections 5.2.3 and 5.2.4 of the contested decision), nor in any of the written submissions of the respondent in appeal. Under those circumstances, the respondent's argument, which is not supported by any facts or evidence, is not persuasive.

- 2.4.5 For these reasons, the subject-matter of operative claim 13 is not inventive and the main request, as a whole, is not allowable.

Auxiliary request 1

3. Admittance
- 3.1 The appellant requested that auxiliary request 1 be not admitted into the proceedings.
- 3.2 Since auxiliary request 1 was filed during the oral proceedings before the Board, its admittance into the proceedings is subject to the Board's discretion pursuant to Article 13(1) RPBA and underlies the

additional stipulations of Article 13(3) RPBA.

3.3 According to the case law, it is a matter for each party to submit all facts, evidence, arguments and requests relevant for the enforcement or defence of his rights as early and completely as possible, in particular in *inter partes* proceedings in order to act fairly towards the other party and, more generally, to ensure due and swift conduct of the proceedings (Case Law, *supra*, IV.E.4.1.2 and 4.1.4).

3.3.1 As may be seen from the minutes of the oral proceedings before the Board, auxiliary request 1 was submitted by the respondent after the Board had announced its conclusion that the main request was not allowable as an attempt to overcome the objection pursuant to Article 56 EPC retained against the main request.

3.3.2 Independently of its success in overcoming the objections, the Board considers that a piecemeal filing of auxiliary request(s) in a case where the relevant objections were known from the beginning of the appeal proceedings neither satisfies the requirements of Article 12(2) RPBA, according to which the respondent should submit a complete case in its reply to the statement of grounds of appeal, nor satisfies the requirements of due process (efficient conduct of the proceedings) and the need for economy of the proceedings (Article 13(1) RPBA). This is particularly true in the present case for auxiliary request 1 which was only submitted after a negative conclusion against the main request had been announced and despite the fact that the objection of lack of inventive step retained was known by the respondent from the beginning of the appeal proceedings (see appellant's statement of

grounds of appeal: section 6.1).

3.3.3 Also, the issue of the inventive step was identified in the Board's communication which was sent to the parties well in advance of the oral proceedings, so that they had sufficient time to prepare their case accordingly. In particular, the respondent would have been in the position to file in due time any auxiliary requests susceptible to overcome the issues identified therein as a measure of precaution, should the appellant's objection be successful. The fact that the respondent understood that the Board's preliminary opinion (see section 8.4.2 of the Board's communication) was rather in his favour cannot justify such a late filing of an auxiliary request, in particular in the absence of any substantiation at any stage of the written phase of the appeal proceedings as to why the subject-matter of the methods claims of the main request (now claims 1-12 of auxiliary request 1) would be inventive for reasons different from those relevant to the product claim. In that respect, in the Board's view, sections 8.4.2.a) and b) of the Board's communication left it open whether or not an inventive step starting from example 37 of G3 as closest prior art could be acknowledged (see e.g. the conditional wording of section 8.4.2.b "if it were to be concluded that G3 indeed teaches away" from using less than 10 percent of lactide as plasticiser).

3.3.4 In view of the above, the circumstances of the present case do not justify that auxiliary request 1 be admitted at such a late stage of the proceedings, contrary to the respondent's opinion.

3.4 In the present case, the respondent further argued for the first time during the oral proceedings before the

Board in view of the inventive step of claim 13 of the main request that step (c) of the method according to claim 1 of the main request (now claim 1 of auxiliary request 1) was crucial in order to make PLA blown films using less than 10 percent lactide as plasticiser.

As indicated in section 2.4.4 above, that issue was neither addressed in the contested decision, nor was it ever addressed by the parties, in particular by the respondent, before the day of the oral proceedings. In that respect, in the Board's view, that argument raises issues which the Board and the appellant cannot reasonably be expected to deal with without adjournment of the oral proceedings, which is contrary to the stipulations of Article 13(3) RPBA.

- 3.5 For those reasons, the Board finds it appropriate to exercise its discretion under Article 13(1) RPBA and its power under Article 13(3) RPBA by not admitting into the proceedings auxiliary request 1 submitted by the respondent during the oral proceedings before the Board.

Auxiliary requests 2 to 8

4. Considering that claim 13 of each of operative auxiliary requests 2 to 4 is identical to claim 13 of the main request, the same conclusion as outlined above in respect of Article 56 EPC for claim 13 of the main request is bound to be drawn for each of these auxiliary requests.
5. Claim 13 of each of operative auxiliary requests 5 to 8 differs from claim 13 of the main request in that the product-by-process formulation was deleted and replaced by a feature defining explicitly that the blown film

comprises less than 10 percent of plasticiser, which is lactide, without any reference to a preparation process.

No specific argument was put forward by the respondent as to how these amendments would overcome the objection of lack of inventive step retained by the Board against claim 13 of the main request. Nor does the Board see any reason to deviate from that decision in view of the amendments made. Under these circumstances, claim 13 of each of auxiliary requests 5 to 8 lacks an inventive step for the same reasons as outlined above in respect of claim 13 of the main request.

6. Considering that none of the respondent's main request and auxiliary requests 2 to 8 is allowable pursuant to Article 56 EPC and that auxiliary request 1 is not admitted into the proceedings, the patent is to be revoked. Also, in view of that decision, there is no reason for the Board to deal with any other argument or objection put forward by the appellant.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



B. ter Heijden

D. Semino

Decision electronically authenticated