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**Datasheet for the decision
of 9 February 2021**

Case Number: T 0661/16 - 3.2.06

Application Number: 03729560.7

Publication Number: 1466047

IPC: D06F37/18

Language of the proceedings: EN

Title of invention:

WASHING MACHINE AND DRYER HAVING TILTED DOOR

Patent Proprietor:

LG Electronics, Inc.

Opponents:

Miele & Cie. KG
Schutzrechte/Verträge
BSH Hausgeräte GmbH

Headword:

Relevant legal provisions:

EPC Art. 84, 123(2)
RPBA 2020 Art. 13(1)
RPBA Art. 12(4)

Keyword:

Amendments - added subject-matter - main request (yes),
auxiliary requests 2 to 5 and 7 to 13 (yes)
Late-filed auxiliary requests - admitted (no)
Reformatio in peius - auxiliary request 6 - inadmissible (yes)

Decisions cited:

Catchword:



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Case Number: T 0661/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 9 February 2021

Appellant:
(Opponent 2)

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Respondent:
(Patent Proprietor)

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Party as of right:
(Opponent 1)

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
12 January 2016 concerning maintenance of the
European Patent No. 1466047 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	E. Kossonakou

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent 2) against the interlocutory decision of the opposition division in which it found that European patent No. 1 466 047 in an amended form met the requirements of the EPC. The appellant requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- II. The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained according to one of the auxiliary requests 2 to 12.
- III. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 of the main request seemingly failed to meet the requirement of Article 123(2) EPC. In relation to the auxiliary requests 2 to 4 the Board stated that the subject-matter of claim 1 of each request was considered to contravene Article 123(2) EPC and/or the claims were unclear (Article 84 EPC). It further noted that auxiliary request 6 might be held inadmissible under the principle of prohibition of *reformatio in peius*.
- IV. With letter of 8 January 2021 the respondent filed a further auxiliary request, numbered auxiliary request 13.
- V. Oral proceedings were held by video conference before the Board on 9 February 2021, in which, as already indicated in a telephone conversation on

8 February 2021, opponent 1 did not participate. During oral proceedings the respondent filed two further auxiliary requests:

- New auxiliary request 1; and
- New auxiliary request 2.

At the close of the oral proceedings, the parties' requests were as follows:

The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent requested that the appeal be dismissed (main request, corresponding to the claims held allowable by the opposition division), else that the patent be maintained in amended form according to one of new auxiliary requests 1 or 2, filed at the oral proceedings, or auxiliary requests 2 to 12, filed with the reply to the grounds of appeal dated 10 October 2016, or auxiliary request 13, filed with letter dated 8 January 2021.

VI. Claim 1 of the main request reads as follows (with feature annotation added as used by the appellant in its grounds of appeal):

- "M1 A washing or drying machine comprising:
- M2 a cabinet (52)
- M2.1 having an opening (51) at the front thereof;
- M3 a tub (54)
- M3.1 provided inside the cabinet for storing washing water,
- M4 a drum (60),
- M4.1 being rotatable provide to a spinning shaft by a motor inside the tub; and
- M5 a door (70)

M5.1 provided at the opening,
M5.2 the door being tilted to the inside of the washing machine, characterised in that
M6 the tilted angle of the door (70) is greater than a tilted angle of the tub (54) and the drum (60);
M7 the door comprises a door glass (76)
M7.1 having a recess at the center thereof toward the inside of the machine;
M7.2 the upper portion of the door glass (76) is recessed to the inside of the drum (60) more than the lower portion of the door glass (76) and
M7.3 the recess having a tilted surface (79)
M7.3.1 provided at the upper portion of the door glass (76)
M7.3.2 for preventing interference with the drum (60)."

Claim 1 of 'new auxiliary request 1' reads as follows (additions compared to claim 1 of the main request underlined):

"A washing or drying machine comprising:
a cabinet (52) having an opening (51) at the front thereof;
a tub (54) provided inside the cabinet for storing washing water;
a drum (60) being rotatably provided to a spinning shaft by a motor inside the tub; and
a door (70) provided at the opening, the door being tilted to the inside of the washing machine, characterised in that: the tilted angle of the door (70) is greater than a tilted angle of the tub (54) and the drum (60); the door comprises a door glass (76) having a recess at the center thereof toward the inside of the machine; a bottom part of the upper portion of the door glass (76) is recessed to the inside of the

drum (60) more than the lower portion of the door glass (76) and the recess having a tilted surface (79) bent as a truncated shape provided at the upper portion of the door glass (76) for preventing interference with the drum (60); wherein the truncated shape is positioned at a top part of the upper portion of the door glass."

Claim 1 of 'new auxiliary request 2' reads as for claim 1 of new auxiliary request 1 with the following features appended:

"the recess of the door glass comprises a lower portion, an upper portion and a bottom part of the upper portion which correspond to the lower portion, upper portion and bottom part of the door glass respectively; and further wherein the door comprises a door frame (72) of a ring shape and the door glass is provided at the centre of the door frame, through which a user can watch the inside of the drum; the door frame has a cross section of a channel shape, and a groove is formed inside of the cross section; the edge of the door glass is outwardly bent so as to form an extension inserted to the groove of the door frame; and wherein the lower portion and bottom part of the upper portion of the recess of the door glass are parallel to the plane of the door frame (72)".

Claim 1 of auxiliary request 2 reads as for the preamble of 'new auxiliary request 1' with the following features appended:

"characterized in that:
the tub and the drum are tilted on the horizontal

plane, and the tilted angle of the door (70) is greater than a tilted angle of the tub (54) and the drum (60); the door comprises a door glass (76) having a recess at the center thereof toward the inside of the machine; the upper portion of the door glass (76) is recessed to the inside of the drum (60) more than the lower portion of the door glass (76) and the recess having a tilted surface (79) provided at the upper portion of the door glass (76) for preventing interference between the upper portion of the door glass with the drum (60)".

Claim 1 of auxiliary request 3 reads as for the preamble of 'new auxiliary request 1' with the following features appended:

"characterized in that:

the tub and the drum are tilted on the horizontal plane, and the tilted angle of the door (70) is greater than a tilted angle of the tub (54) and the drum (60); the door comprises a door glass (76) having a recess at the center thereof toward the inside of the machine; the front surface of the cabinet is tilted causing the door to be tilted such that the upper portion of the door glass (76) is recessed to the inside of the drum (60) more than the lower portion of the door glass (76), the recess having a tilted surface (79) provided at the upper portion of the door glass (76) for preventing interference between the upper portion of the door glass with the drum (60); and wherein the door and the front surface of the cabinet form an entirely tilted surface".

Claim 1 of auxiliary request 4 reads as for claim 1 of auxiliary request 3 with the expression "bent as a truncated shape" inserted immediately after the reference sign "(79)".

Claim 1 of auxiliary request 5 reads as for claim 1 of auxiliary request 4 with the following feature inserted immediately after the feature "the door comprises a door glass (76) having a recess at the center thereof toward the inside of the machine":

"the door comprises a door frame (72) of a ring shape, the door glass being provided at the center of the door frame, wherein the door frame has a cross section of a channel shape, and a groove is formed inside of the cross section, and wherein the edge of the door glass is outwardly bent so as to form an extension inserted to the groove of the door frame;"

Claim 1 of auxiliary request 6 reads as follows:

"A washing machine comprising:
a cabinet (52) having an opening (51) at the front thereof;
a tub (54) provided inside the cabinet for storing washing water;
a drum (60) being rotatably provided to a spinning shaft by a motor inside the tub; and
a door (70) provided at the opening, the door being tilted to the inside of the washing machine, characterized in that the door comprises a door glass (76) having a recess at the center thereof toward the inside of the machine and the recess having a tilted surface for preventing interference with the drum."

Claim 1 of auxiliary request 7 reads as for claim 1 of the main request with the words "or drying" in feature M1 deleted.

The respective claim 1 of auxiliary requests 8 to 11 read as for the respective claim 1 of auxiliary requests 2 to 5 with the words "or drying" deleted from the first line of the claim.

Claim 1 of auxiliary request 12 reads as follows:

"A washing machine comprising:

a cabinet (52) having an opening (51) at the front surface thereof;

a tub (54) provided inside the cabinet for storing washing water;

a drum (60) being rotatably provided to a spinning shaft by a motor inside the tub; and

a door (70) provided at the opening, the door being tilted to the inside of the washing machine at a tilted angle to the vertical plane, characterized in that: the tub and the drum are tilted on the horizontal plane, and the tilted angle of the door (70) is greater than a tilted angle of the tub (54) and a tilted angle of the drum (60);

the door comprises a door glass (76) having a recess at the center thereof toward the inside of the machine;

the door comprises a door frame (72) of a ring shape, the door glass being provided at the center of the door frame, wherein the door frame has a cross section of a channel shape, and a groove is formed inside of the cross section, and wherein the edge of the door glass is outwardly bent so as to form an extension inserted to the groove of the door frame;

the opening of the cabinet (52) is tilted on the vertical plane such that an upper portion of the opening (51) is recessed to the inside of the cabinet more than a lower portion of the cabinet (52) causing the door to be tilted, the recess having a tilted surface (79) bent as a truncated shape provided at the

upper portion of the door glass (76) for preventing interference between the upper portion of the door glass with apparatuses inside the opening; and wherein the door and the front surface of the cabinet form an entirely tilted surface."

Claim 1 of auxiliary request 13 reads as follows:

"A washing machine comprising:
a cabinet (52) having an opening (51) at the front surface thereof;
a tub (54) provided inside the cabinet for storing washing water;
a drum (60) being rotatably provided to a spinning shaft by a motor inside the tub; and
a door (70) provided at the opening, the door being tilted to the inside of the washing machine at a tilted angle to the vertical plane, characterized in that:
the tub and the drum have tilted angles to the horizontal plane, and the tilted angle of the door (70) is greater than the tilted angle of the tub (54) and the tilted angle of the drum (60);
the door comprises a door glass (76) having a recess at the center thereof toward the inside of the machine;
the door comprises a door frame (72) of a ring shape, the door glass being provided at the center of the door frame, wherein the door frame has a cross section of a channel shape, and a groove is formed inside of the cross section, and wherein the edge of the door glass is outwardly bent so as to form an extension inserted to the groove of the door frame; and
the opening of the cabinet (52) is tilted on the vertical plane such that an upper portion of the opening (51) is recessed to the inside of the cabinet more than a lower portion of the opening (51) causing the door to be tilted on the vertical plane, the recess

having a tilted surface (79) provided at an upper portion of the door glass (76) for preventing interference between the upper portion of the door glass and apparatuses inside the opening."

VII. The appellant's arguments relevant to the present decision may be summarised as follows:

Main request

The subject-matter of claim 1 extended beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC. Features M6, M7.2 and M7.3.1 were not directly and unambiguously disclosed in isolation from the further features disclosed both on page 9, lines 1 to 8 as filed and in Figures 3 and 4. The tilted surface 79 being 'bent as the truncated shape' was just one of the features disclosed in combination with the door glass detail in the description, yet had not been included in claim 1. The amended claim thus also covered embodiments which were not originally disclosed.

New auxiliary request 1

This request should not be admitted since the objections under Article 123(2) EPC to the main request were known by the respondent at least since the grounds of appeal were filed. The introduction of the tilted surface being 'bent as a truncated shape' also lacked clarity under Article 84 EPC since it was unclear in what way the tilted surface could be envisaged to possess a 'truncated shape'.

New auxiliary request 2

This should not be admitted. The claim still contained the expression 'bent as a truncated shape' which lacked

clarity.

Auxiliary requests 2 to 13

These requests should not be admitted since they failed to overcome the objections under Articles 84 and 123(2) EPC raised against the foregoing requests.

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

Main request

The subject-matter of claim 1 met the requirement of Article 123(2) EPC. The basis for claim 1 was Figures 3 and 4 in combination with page 9, lines 1 to 8. Page 7, lines 4 to 8 also provided further information. It was not necessary to include the feature 'bent as the truncated shape' since the skilled person already read this feature into the tilted surface of the recess, clearly depicted in the upper portion of the door glass in Figures 3 and 4. With the recessed door glass being cut-off or shortened in this upper portion, thereby avoiding interference with the drum, the use of the 'truncated' language was superfluous.

New auxiliary request 1

This request should be admitted as it responded to the Article 123(2) EPC objection, the extent of which had only been clarified during the discussion on the main request. The amendment was also not complex and introduced nothing beyond what had previously already been discussed. The claim was also clear, as the tilted surface being truncated was reflected by Figures 3, 4 and 5 and the wording clearly defined the shape of the top part of the upper portion of the door glass.

New auxiliary request 2

This request should be admitted as it was a genuine attempt to overcome the foregoing objections and to move the case forward. The addition of the detail of the various parts of the door glass and the parallel nature of this with respect to the door frame made the position of the tilted surface and the nature of the truncated shape clear.

Auxiliary requests 2 to 13

The subject-matter of claim 1 of these requests met the requirements of both Article 123(2) EPC and Article 84 EPC for the same reasons as those presented for the main request.

Reasons for the Decision

1. *Main request*

1.1 *Article 123(2) EPC*

1.1.1 The subject-matter of claim 1 fails to meet the requirement of Article 123(2) EPC.

1.1.2 Claim 1 as granted has been amended by way of the addition of features M6, M7.2 and M7.3.1. These features define the angle of tilt of the door being greater than that of the tub and the drum, the upper portion of the door glass being recessed to the inside of the drum more than the lower portion of the door glass and the tilted surface being provided at the upper portion of the door glass. The basis for the subject-matter of claim 1 was argued by the respondent

to be Figures 3 and 4 in combination with page 9, lines 1 to 8 of the application as filed, and possibly page 7 lines 4 to 8.

1.1.3 Feature 7.3.1 directed to the location of the tilted surface at the upper portion of the door glass is disclosed on page 9, lines 5 to 8, yet in combination with the qualification that the tilted surface 79 is 'bent as the truncated shape' which has not been included in claim 1. Moreover, this paragraph on page 9 forms part of the description relating to the embodiments shown in Figures 3 and 4 (see page 8, lines 19 to 25). It thus follows that the depiction in these figures of the door glass with a recess and a tilted surface in the upper portion of the door glass forms an integral part of the disclosure of these embodiments. Therefore the further features disclosed in these figures which are in a structural and/or functional relationship with those individual features taken up into the claim (i.e. features M6, M7.2 and M7.3.1) together form the subject-matter which is disclosed.

1.1.4 From Figures 3 and 4 it is evident that the door glass has a very particular form which goes beyond the recess simply having a tilted surface at the upper portion of the door glass, as claimed. Rather, for example, both figures show the lower portion of the door glass 76 being tilted at a particular angle to the vertical and this particular angle of tilt continuing into the bottom part of the upper portion of the door glass 76. Moving upwards, the door glass then diverges from its continuous development at the particular angle to the vertical, the divergence being away from the inside of the machine and commencing at a specific part of the upper portion of the door glass 76 thereby forming the

tilted surface. Thus, the upper portion of the door glass is prevented from interfering with the apparatuses inside the drum 60 (see page 9, lines 5 to 8) which would otherwise occur in the absence of the tilted surface, due to the particular angle of the lower portion of the door glass which when continued as an imaginary surface to the top part of the upper portion of the door glass would interfere with those apparatuses. These additional features relating to the door glass and its tilted surface are disclosed in Figures 3 and 4 and lines 1 to 8 of page 9 in structural combination with those features taken up into claim 1. Claim 1, however, fails to define the detailed form of the door glass and its tilted surface in the particular manner disclosed. As a consequence, the inclusion of only some, but not all, of the features relating to the specific form of the door glass in claim 1 extends its subject-matter beyond the content of the application as filed.

- 1.1.5 The respondent's argument, that the feature 'bent as the truncated shape' was not necessary in claim 1 due to it being superfluous, is not accepted. This feature is used to describe the tilted surface provided in the upper portion of the door glass in lines 6 to 7 of page 9. With feature M7.2 having introduced the 'upper portion of the door glass' into claim 1, the omission from claim 1 of the feature disclosed in combination with it, i.e. the 'tilted surface bent as the truncated shape ... provided at the upper portion of the door glass', or at least an alternative expression accurately describing the tilted surface, results in subject-matter lacking a basis in the application as filed.

- 1.1.6 The respondent's allegation that the feature 'bent as the truncated shape' was already read into the claim by the skilled person, due to the tilted surface of the recess being clearly depicted in the upper portion of the door glass in Figures 3 and 4, is also not accepted. As explained in point 1.1.4 above, the figures depict the door glass in a very particular form and, if relying on these figures to provide the basis for the amended claim, this particular shape of the door glass must be defined with all features which are depicted in structural combination with those features taken up into claim 1. Thus the omission of at least the structure relating to the particular angle of tilt of the lower portion of the door glass continuing into the bottom part of the upper portion of the door glass 76 results in the claimed subject-matter extending beyond the content of the application as originally filed.
- 1.1.7 The respondent's further argument that the 'truncated' language was unnecessary, since the skilled person already read this feature into claim 1 through the tilted surface cutting-off the recess of the door glass to avoid interference with the drum, does not change the above finding. The feature 'tilted surface' is very broad and alone fails to accurately define how the recess in the door glass is originally disclosed, particularly in Figures 3 and 4. Through omission of the 'truncated' language from claim 1, the very particular form of the door glass depicted in Figures 3 and 4 has not been defined, as detailed in point 1.1.4 above. Without this form being defined, the claimed subject-matter does not meet the requirement of Article 123(2) EPC.

- 1.1.8 In summary therefore, the subject-matter of claim 1 extends beyond the content of the application as filed, contrary to Article 123(2) EPC.
- 1.2 For at least this reason, the main request is not allowable.
2. *New auxiliary request 1*
 - 2.1 *Admittance (Article 13(1) RPBA 2020)*
 - 2.1.1 With this request having been filed at oral proceedings before the Board, it may be admitted only at the discretion of the Board as set out in Article 13(1) RPBA 2020, such discretion being exercised *inter alia* in view of whether it has been demonstrated that the amendment *prima facie* does not give rise to new objections.
 - 2.1.2 Claim 1 has been amended *inter alia* to include the definition of the tilted surface of the recessed door glass being 'bent as a truncated shape'. As already indicated in the Board's preliminary opinion, point 7.4, this expression lacks clarity. It is not clear what shape, and thus what limitation is defined through the tilted surface being bent as a 'truncated shape'. In what way the tilted surface should be understood to be bent is unclear as indeed is the way in which the tilted surface is related to a truncated shape.
 - 2.1.3 The respondent's argument that the added feature clearly defined the shape of the top part of the upper portion of the door glass is not accepted. How a 'truncated shape' of a surface is to be understood is not evident from the language alone. Even using the respondent's interpretation of 'truncated' to be 'cut-

off' or 'shortened', in what way the shape of the tilted surface should be understood to be cut-off or shortened is unclear from the claim.

2.1.4 Considering the cross-sectional view of the claimed door glass in Figures 3 to 5 of the patent, it can be seen that the tilted surface 79 in the upper part of the upper portion of the door glass diverges from the linear development of the door glass in its lower portion. This divergence results in a difference of distance, measured between the door glass 76 and the plane of the door frame 72, of the upper versus the lower portion of the door glass (greater distance at the lower portion than the upper portion) which could perhaps be regarded as a change in shape of the cross-section of the door glass. However, even on the basis of this analysis, the 'shape' of the cross-section of the door glass is not clearly defined by the 'as a truncated shape' wording. Moreover, this interpretation of Figures 3 to 5 does not enable a clear understanding of how the tilted surface itself should be understood as being 'bent as a truncated shape'.

2.1.5 The respondent's further argument that the expression was clear since the tilted surface being truncated was reflected by Figures 3, 4 and 5 is also not accepted. Article 84 EPC requires that the claims 'shall be clear and concise and be supported by the description'. Thus, the wording of a claim must be clear (in its own right) rather than relying on the description for its wording to be understood. As a consequence, even if claim 1 could be regarded as clear through reference to the description or figures (which is anyway denied, see point 2.1.4 above), this would not render the claim clear in the sense of Article 84 EPC.

2.1.6 It thus follows that the amendment to claim 1 has *prima facie* given rise to a new objection under Article 84 EPC. The Board thus exercised its discretion not to admit new auxiliary request 1 into the proceedings (Article 13(1) RPBA 2020).

2.1.7 For completeness sake, it is further noted that the amendments made to claim 1 also fail to overcome the objection under Article 123(2) EPC to the subject-matter of claim 1 of the main request. The very specific form of the door glass disclosed in Figures 3 to 5 goes beyond the tilted surface being 'bent as a truncated shape' (notwithstanding this expression anyway lacking clarity) to include further detail as indicated at least in point 1.1.4 above. As a consequence the subject-matter of claim 1 of new auxiliary request 1 also *prima facie* extends beyond the content of the application as filed contrary to Article 123(2) EPC.

3. *New auxiliary request 2*

3.1 *Admittance (Article 13(1) RPBA 2020)*

3.1.1 With this request also having been filed at oral proceedings before the Board, its admittance is also at the discretion of the Board as set out in Article 13(1) RPBA 2020, such discretion being exercised *inter alia* in view of whether it has been demonstrated that the amendment *prima facie* overcomes the objections to the foregoing request.

3.1.2 Despite a significant number of additional features having been added to the present claim 1 compared to claim 1 of new auxiliary request 1, these fail to fully overcome the clarity objection directed to the tilted

surface being 'bent as a truncated shape'. The fundamental lack of clarity remains that it is unclear what is meant by the tilted surface being bent as a truncated shape.

3.1.3 The respondent's contention that the addition of details of the various parts of the door glass and the parallel nature of this with respect to the door frame overcomes the clarity objection is not persuasive. It is accepted that the definition of the various parts of the door glass and the indication that the truncated shape is positioned at a top part of the upper portion of the door glass improves the definition of where the truncated shape is located, yet the basic clarity objection against the tilted surface being bent as a truncated shape remains. It remains unclear from the claim in what way the tilted surface should be understood to be bent as well as the way in which the tilted surface is related to the truncated shape as this 'shape' is not further defined. Likewise, the parallel nature of the door glass with respect to the door frame indeed more accurately defines the form of the door glass, yet offers nothing to clarify how the truncated shape of the tilted surface is to be understood.

3.1.4 It thus follows that claim 1 *prima facie* fails to overcome the clarity objection to claim 1 of the foregoing request. The Board thus exercised its discretion set out in Article 13(1) RPBA 2020 not to admit new auxiliary request 2 into the proceedings.

4. *Auxiliary requests 2 to 13*

4.1 After the conclusion regarding new auxiliary request 1 had been announced at oral proceedings, the Chairman

indicated (see the minutes of the oral proceedings) the preliminary opinion of the Board with respect to auxiliary requests 2 to 13 as follows:

- (a) The subject-matter of claim 1 of each of auxiliary requests 2 to 5 seemingly failed to overcome the objections under Article 123(2) EPC and/or Article 84 EPC in the foregoing requests;
- (b) Claim 1 of auxiliary request 6 was of broader scope than that of claim 1 found by the opposition division to meet the requirements of the EPC. The request thus appeared to contravene the principle of prohibition of *reformatio in peius*; and
- (c) The subject-matter of claim 1 of each of auxiliary requests 7 to 13 appeared not to overcome the objections under Article 123(2) EPC and/or Article 84 EPC in the foregoing requests.

4.2 To this preliminary finding the respondent indicated that it had no arguments that it wished to present in defence of the auxiliary requests 2 to 13.

4.3 With regard to auxiliary requests 2 to 5 and 7 to 13, the Board thus confirmed its preliminary opinion indicated in point 4.1 above and concluded that none of the auxiliary requests 2 to 5 and 7 to 13 was allowable.

4.4 In the absence of further arguments with respect to auxiliary request 6, the Board also confirmed claim 1 of this request to contravene the principle of prohibition of *reformatio in peius*. The request was thus held inadmissible under Article 12(4) RPBA 2007.

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:



D. Grundner

M. Harrison

Decision electronically authenticated