

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 20 January 2021**

**Case Number:** T 0317/18 - 3.2.04

**Application Number:** 09818676.0

**Publication Number:** 2348828

**IPC:** A01K63/10, A01K61/60

**Language of the proceedings:** EN

**Title of invention:**

In situ submarine net cleaning and inspecting device

**Patent Proprietor:**

Mic Pty Ltd

**Opponent:**

Acapo AS

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56, 123(2)

**Keyword:**

Novelty - main request (no)

Amendments - intermediate generalisation

Inventive step - auxiliary request (yes)

**Decisions cited:**

G 0002/10, T 1538/12

**Catchword:**



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

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0317/18 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 20 January 2021**

**Appellant:** Mic Pty Ltd  
(Patent Proprietor) GPO Box 1645  
142, 2 Salamanca Square  
Hobart, Tasmania 7000 (AU)

**Representative:** Bijvank, Koen Mattijs Lodewiek  
Brinkhof N.V.  
De Lairessestraat 111-115  
1075 HH Amsterdam (NL)

**Appellant:** Acapo AS  
(Opponent) P.O. Box 1880 Nordnes  
5817 Bergen (NO)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
1 December 2017 concerning maintenance of the  
European Patent No. 2348828 in amended form.

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** J. Wright  
C. Heath

## **Summary of Facts and Submissions**

- I. The appeals were filed by the proprietor and opponent against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1, the patent as amended met the requirements of the EPC.
- II. The opposition division decided that the subject matter of claim 1 of the main request (as granted) lacked novelty and that the patent as amended according to auxiliary request 1 met the requirements of the EPC because its subject matter did not extend beyond the application as filed, and was novel and inventive over the cited prior art.
- III. Oral proceedings before the Board were held on 20 January 2021. During the oral proceedings, the appellant-proprietor filed a new auxiliary request 5.
- IV. The appellant (proprietor) requests that the decision under appeal be set aside and that the patent be maintained as granted, in the alternative that the appeal of the opponent be dismissed, that is that the patent be maintained according to auxiliary request 1, or in the alternative that the patent be maintained according to one of auxiliary requests 2 to 4, all filed with letter of 22 August 2018, or according to auxiliary request 5, filed on 20 January 2021 at oral proceedings before the Board, whereby auxiliary request 5 is to be considered higher ranking than auxiliary request 4.

The appellant (opponent) requests that the decision under appeal be set aside and that the patent be revoked.

V. The independent claim of the main request reads as follows:

"A submarine in-situ net cleaner comprising a skid chassis (1) adapted for smooth and snare free sliding across the surface of said net (2), a buoyancy means (3) associated with said chassis (1) to provide said cleaner with buoyancy, a driving means adapted to cooperate with said net (2) and manoeuvre said cleaner about the surface of said net (2), a propulsion means (5) adapted to propel said cleaner onto and maintain contact with said net (2) and a cleaning means (6) adapted to remove contaminants from said net (2) including marine fouling from the surface of said net (2) so as to clean said net (2); characterised in that said cleaning means (6) is a vacuum adapted to draw water and contaminants through and from the surface of the net (2)".

Claim 1 of auxiliary request 1 reads as claim 1 of the main request except that the characterising feature is amended to read as follows (additions italicised by the Board):

"characterised in that said cleaning means (6) is a vacuum adapted to draw water and contaminants through and *directly* from the surface of the net (2), and *further characterised in that said vacuum acts through at least one vacuum slot formed in the skid chassis*".

Claim 1 of auxiliary request 2 reads as auxiliary request 1 but amends the last feature to read as follows (deletions emphasised by the Board in strike-through):

"and further characterised in that said vacuum acts through ~~at least one~~ vacuum slots formed in the skid chassis".

Claim 1 according to auxiliary request 3 reads as auxiliary request 2 with the following final feature added:

*", and wherein said driving means includes a pair of toothed sprockets (4) positioned within either side of said chassis (1)."*

Claim 1 of auxiliary request 5 reads as for the main request except that it adds the following final feature:

*", and wherein said skid chassis (1) includes lower skids (17) of a generally planar and rectangular formation of tubular material having curved lower surfaces shaped to avoid snagging of said net (2) and wherein said cleaning means (6) is a vacuum conduited through said chassis (1) and delivered through vacuum slots formed in the lower edge of said lower skids (17)".*

VI. In the present decision, reference is made to the following document:

A5: NO20043351, with reference to its English language translation filed 28 July 2018 as A13

VII. The appellant-proprietor's arguments can be summarised as follows:

The subject matter of claim 1 of the main request is new with respect to A5.

Auxiliary request 1 does not add subject matter extending beyond the application as filed because there is an original disclosure of one or more vacuum slots in a skid chassis and the feature is not originally disclosed in a functional or structural relationship with any feature that has not been claimed. The latter also applies to auxiliary requests 2 and 3.

Auxiliary request 5 should be admitted into the proceedings. Its subject matter involves an inventive step starting from A5 with the skilled person's general knowledge.

VIII. The appellant-opponent's arguments can be summarised as follows:

A5 takes away novelty of claim 1 of the main request.

Auxiliary request 1 adds subject matter extending beyond the application as filed because there is no original disclosure of a cleaner having just one vacuum slot. Moreover, slots in a skid chassis are only originally disclosed in a functional and structural relationship with the chassis being the vacuum conduit, which has not been claimed. Therefore, the subject matter is an unallowable intermediate generalisation. The latter also applies to auxiliary requests 2 and 3.

Auxiliary request 5 should not be admitted into the proceedings because it could have been filed earlier. Its subject matter lacks inventive step starting from A5 with the skilled person's general knowledge.

## **Reasons for the Decision**

### 1. Admissibility

During the oral proceedings before the Board, the appellant-proprietor withdrew its objection to the admissibility of the opponent's appeal. No deficiency is apparent to the Board that might warrant the rejection of either appeal as inadmissible under Rule 101 EPC. Therefore, the Board concludes that the appeals are admissible.

### 2. Background

The invention (see published patent specification, paragraph [0001] and [0024]) relates to the *in situ* cleaning of submarine nets and in particular, to a mobile submarine vacuum cleaner device adapted to remotely clean and remove algae and similar contamination from submerged nets.

### 3. Main request, claim 1, lack of novelty with respect to A5

#### 3.1 A5 (see abstract and figure 4) discloses a submarine (unit 10) *in situ* cleaner for a seine, which is a kind of fishing net. The cleaner is built on a chassis 12.



3.2 In the Board's view it is implicit that the chassis is a skid chassis, adapted for smooth and snare-free sliding across the surface of a net.

In this respect, the Board is not convinced by the appellant-proprietor's argument that A5's device might be so small as to pass through the meshes of the net and so would not be able to slide across the net but rather would risk becoming ensnared in it.

3.3 Whilst it is true that A5 neither gives dimensions for the mesh of the net to be cleaned nor the cleaner, the mesh must be fine enough to retain fish. Moreover, the skilled person, who reads A5 as they would a claim, namely with a mind willing to understand, would reject as technically illogical the idea that the cleaning device could be so small (smaller than a fish) as to pass through the net.

3.4 Furthermore, all the corners and the frame members are rounded so they would not snag on the net. Also, the frame supports all the other components of the cleaner so that they do not protrude beyond one side of the chassis (see figure 3), where they might otherwise become ensnared in the net.

3.5 Therefore, even if A5 (or its translation) does not say so A5's chassis 12 is a skid chassis adapted for smooth and snare-free sliding across the surface of the net it is to clean.

3.6 It is not disputed that A5 discloses a buoyancy means associated with the chassis as claimed (see page 3, line 35 to page 4, line 13).

3.7 In the Board's view, A5 also discloses a driving means adapted to cooperate with the net and manoeuvre the cleaner about the surface of the net.

3.7.1 Here, the Board finds it useful to consider the usual meaning of "cooperate" as used in the claim.

The normal meaning of the word *cooperate*, see Oxford English Dictionary on-line (OED) is the following: *To work together, act in conjunction (with another person or thing, to an end or purpose, or in a work)*. Thus, claim 1 requires that the driving means must act *in conjunction* with the net, but not that it must physically engage with the net as the appellant-proprietor has interpreted *cooperation* to imply.

3.7.2 A5 (see page 5, line 30 to page 6, line 7 and figures 3 and 4) discloses a driving means that includes a pulley 24 that spools a suspension cable (for example attached to a pontoon) and so regulates the vertical positioning of A5's net cleaner relative to the net (seine). In the Board's view, though the suspension cable may not be attached to the net, by making such an adjustment *relative* to the net, the pulley 24 is not working independently of the net but rather in conjunction with it for the purpose of cleaning different parts of the net in the vertical direction. Thus, in the Board's view, the driving means cooperates with the net.

3.7.3 The driving means further includes a propulsion means 28. As evident from figure 4 its orientation parallel to the plane of the frame 12 and perpendicular to the spool guide the device horizontally or "alongside" (A13, page 6, lines 10 and 19) the net. The combined movement of pulley and spool with propulsion

28 thus allow for horizontal and vertical movement along the net. Thus the driving means including both is arranged to manoeuvre the cleaner *about* the surface of the net as claimed, as this is understood by the appellant proprietor.

3.8 It is not in dispute that A5's cleaner has propulsion means, referred to as propulsion members/devices 26, 28 (see abstract, claim 1 and page 6, lines 18 to 27 with figure 4). Device 28 has been discussed above. Contrary to how the appellant-proprietor has argued, the Board considers the other propulsion device 26, which (see figure 4) is oriented perpendicular to the plane of frame 12 to be adapted to propel the cleaner onto and to maintain contact with the net.

3.9 In this regard, claim 1 (which defines a net cleaner that does not including the net itself) requires only that propulsion means are *suitably adapted* for propelling the cleaner onto and maintaining contact with a net, whether or not this actually happens whilst the net is being cleaned.

Turning again to A5's propulsion means 26 (see page 6, lines 18 to 21 with figure 4), it is indisputably used to guide the cleaner towards the net, for example under the control of a remote operator (see page 7, first 3 lines). In the Board's view, as the propulsion means is adapted to propel the cleaner to approach the net, it is necessarily suitable for and thus adapted to propel it further in the same direction until it is on the net and to then maintain contact with the net.

3.10 This is so even if the somewhat ambiguous passage on page 3, lines 27 to 28 of A13 is really to be understood as the appellant proprietor suggests as

meaning that A5's cleaner always maintains a certain distance from the net. The passage in question states that the washing machine "is built on a frame where all the mechanical components are arranged, and which is kept in a suitable distance from the seine". Nowhere else does A5/13 mention this or give further detail as to how this might be achieved. That this might involve sensors interacting with the control is pure conjecture as nothing is shown. The Board rather infers from the use of jets of water and suction to clean the net, that to be effective, the device must operate in close proximity to the net, and that this is why the supporting frame 12 has smooth rounded features and is located closest the net.

- 3.11 It is not disputed that A5 discloses a cleaning means adapted to remove contaminants from the net surface, which implicitly includes marine fouling contaminants (see for example page 5, lines 16 to 24, cf. page 2, lines 22 to 24).
- 3.12 It is also common ground that A5 (see page 7, lines 20 to 25) discloses a collection means with a suction device (a vacuum in claim 1's wording). However, it is disputed whether this vacuum is adapted to draw water and contaminants through and from the surface of the net. In the Board's view it is.

In this respect the appellant-proprietor has argued that A5 is silent as to where the vacuum means is located so it might be that it was remote from the net and that it could only collect debris already suspended in the water having been first freed from the net by A5's pressure jet washer.

3.13 Whatever the power of A5's vacuum means, it must be sufficient to draw a flow of water towards itself. If this were not so, it could not collect dirt and waterproofing agents (cf. page 7, lines 21-22).

Moreover, whilst it is true that A5 is silent as to the precise location of the suction (vacuum) means, it does explain that the collection system, of which the vacuum cleaning means is a part, may be arranged on the rotating arm 16 (see figure 4), possibly around the washer unit 18 itself or even on the frame. As is evident from figure 4 these forward locations on the device will be closest to the net. In these positions the vacuum means operate within the same close range or even forward of the jet means. In the Board's understanding this can but mean that they are drawing in water and contaminants through and from the surface of the net.

This is all the more so since the claim does not specify how securely, or even whether, such contaminants might be adhered to the net's surface whilst still allowing the vacuum means to draw them off. The vacuum must merely be able to draw them from the net's surface.

3.14 For the above reasons, the subject matter of claim 1 lacks novelty with respect to A5.

4. First auxiliary request, claim 1, added subject matter

4.1 In deciding the question of allowability of amendments under Article 123(2) EPC, the Board, following well established practice (see Case Law of the Boards of Appeal, 9th edition, 2019 (CLBA), II.E.1.3.1 and the decisions cited therein), must consider whether the

amendments in question are directly and unambiguously derivable by the skilled person from the application as filed, using normal reading skills and, where necessary, taking account of their general knowledge. This is the "*gold*" standard according to which amendments are assessed (see G2/10, reasons 4.3).

- 4.1.1 Furthermore (see CLBA, II.E.1.9 and the decisions cited therein), according to established case law, it will normally not be allowable to base an amended claim on the extraction of isolated features from a set of features originally disclosed only in combination, e.g. a specific embodiment in the description. Such an amendment results in an "intermediate generalisation". An intermediate generalisation is justified only in the absence of any clearly recognisable functional or structural relationship among the features of the specific combination or if the extracted feature is not inextricably linked with those features.
- 4.2 Turning to the present case, claim 1 essentially combines original claims 1 and 11 but adds the further characterising feature that the vacuum *acts through at least one vacuum slot formed in the skid chassis*. Thus, the claim covers the possibility that the cleaner has only one slot.
  - 4.2.1 In the Board's view this feature adds subject matter because the application as filed (references are to the international application as published WO 2010/040171 A1) does not disclose a net cleaner comprising only one vacuum slot.
  - 4.2.2 The sole embodiment is described on pages 5 to 9 with reference to the figures. Where slots are shown in the figures (see for example figures 2 and 4, slots 18 and

19) there are always more than one. Vacuum slots in the chassis are first mentioned on page 6, lines 14 to 24. There they are described in the plural as forward and rear transverse vacuum *slots* 18 and 19. The description subsequently states (see page 7, lines 13 to 17) that "activation of the vacuum can commence thereby causing water to be drawn into the front and/or rear vacuum slots [...]". The appellant-proprietor has argued that the "or" alternative here directly and unambiguously discloses a single slot. The Board disagrees.

4.2.3 The *or* alternative could indeed mean that the cleaner was provided with either a front or a rear vacuum slot, thus a single slot, as the appellant-proprietor has argued. It could however also be read as meaning plural slots both at front and rear ends ("and"), or at either end ("or"). Furthermore, it could also be read as referring to alternative vacuum modes, meaning that the cleaner had front and rear slots, thus a plurality thereof, and that water could be drawn either through the front slots *or* through the rear slots or through the slots at front and rear. Therefore, the statement is ambiguous. Consequently, it does not meet the *gold standard* in regard to providing an unambiguous derivation for the amended feature [at least] *one slot*.

Nor is there any other disclosure of a single slot in the application as filed. The only other mention of any slot in the description (see page 7, lines 29 to 32) defines that spray bars can run the full width of the *slots*, in the plural. Original claim 12 defines a cleaner having vacuum *slots*, once again in the plural.

4.2.4 Moreover, the general statement at the end of the description as originally filed (see page 9, lines 22 to 26: numerous variations and/or modifications may be

made to the invention as shown in the specific embodiments) cannot justify claiming a single slot. In accordance with established jurisprudence (see CLBA, II.E.1.3.4 c, and the cases cited, in particular **T 1538/12**, reasons 1.1), such general statements do not constitute, and thus cannot replace, a direct and unambiguous disclosure of a particular generalisation in the claim.

4.2.5 Therefore, the amendment (at least one slot) is not directly and unambiguously disclosed in the application as filed.

4.3 Furthermore, the various passages mentioning the slot do so in combination with other structurally and functionally related features that have not been included in claim 1.

4.3.1 As already touched upon, vacuum slots in the chassis are first explained on page 6, lines 14 to 24, which is part of the description of the only embodiment. There, amongst other things, it is explained that the chassis functions as a conduit for the vacuum means (page 6, lines 17 and 18) and that (page 6, lines 21-24) vacuum suction is effected throughout the skid chassis and directed to the front and rear vacuum slots.

4.3.2 By the same token, the only original claim to define vacuum slots in the skid chassis (as filed claim 12 corresponding to granted claim 3) also defines that the vacuum is conducted through the chassis. These features are disclosed in a tight functional and structural relationship, the chassis conducting the vacuum to the slots which are provided in the chassis. No other arrangement of slots and conduits is disclosed or suggested.



- 4.3.3 Nor does the Board see these inextricable links differently in the light of the appellant-proprietor's argument (referring again to the paragraph where the slots are first described, page 6, lines 14 to 24) that, because the first sentence of this paragraph describes slots in the chassis but makes no reference to the chassis being the vacuum conduit, the slots are independent of the latter.
- 4.3.4 The skilled person does not read each sentence of the description of the embodiment, let alone a paragraph, as isolated unconnected statements, but rather contextually, in order to understand what is being described. The first sentence is followed by a second sentence explaining that *the slots* (that is those of the first sentence), are formed in the tubes of the chassis that functions as a conduit for the vacuum means. Thus, read in context, the skilled person is left in no doubt that the slots introduced in the first sentence are functionally and structurally related to the chassis forming the vacuum conduit, as already explained.
- 4.3.5 It follows that there is no justification for claiming vacuum slots in the skid chassis whilst not claiming that the chassis is the vacuum conduit. Consequently, the Board considers that claim 1 represents an unallowable intermediate generalisation.
- 4.4 From all of the above, the Board finds the subject matter of claim 1 to add subject matter extending beyond the application as filed, Article 123(2) EPC. Therefore, auxiliary request 1 must fail.
5. Auxiliary requests 2 and 3, claim 1

Claim 1 of both these requests defines a plurality of slots in the skid chassis. However, as with claim 1 of the first auxiliary request, these slots are claimed without the feature that the vacuum acts as the vacuum conduit. Therefore, these claims likewise constitute unallowable intermediate generalisations (see section 4.10 above) which add subject matter extending beyond the application as filed. Therefore, these requests must fail.

6. Auxiliary request 5 (ranked above auxiliary request 4), admissibility

6.1 Auxiliary request 5 was filed at the oral proceedings before the Board. It therefore constitutes an amendment to the appellant-proprietor's appeal case in the sense of Article 13(1) and (2) RPBA 2020.

In accordance with the latter paragraph, an amendment made after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

6.2 In the present case, in its communication in preparation for the oral proceedings (see section 7.2) the Board considered the issue of added subject matter for the first auxiliary request. In this context, it raised the issue of intermediate generalisations for the first time (see sections 7.2.1 and 7.2.3), stating how intermediate generalisations were to be examined and that the issue might need to be discussed. The Board also broadly stated the context in which the feature of vacuum slots was originally disclosed to be

"part of the detailed description of the embodiment" (cf. communication, top of page 9), but gave no opinion as to whether, let alone why, claim 1 might constitute an intermediate generalisation.

- 6.3 The appellant-opponent replied to this communication in a letter dated 16 December 2020. Although the reply considered auxiliary request 1, it did not mention the issue of added subject matter at all. Rather, it dealt only with the issue of inventive step.
- 6.4 Not until the oral proceedings before the Board was the issue of added subject matter of claim 1 of auxiliary request 1 by way of intermediate generalisation discussed in detail. In particular, the specific context for the original disclosure of vacuum slots was discussed for the first time (see minutes, bottom of page 2).
- 6.5 The appellant-proprietor reasoned that it could not have foreseen the details of this discussion, in particular what feature or features of the entire description of the embodiment the appellant-opponent or the Board might consider to be functionally or structurally related to the vacuum slot(s) feature of auxiliary request 1. Moreover, the feature in the context of original claim 12 was discussed for the first time. Therefore, it argued, it was not in a position to provide an informed and appropriate response prior to the oral proceedings and that these were exceptional circumstances justifying auxiliary request 5 being admitted at the oral proceedings. The Board agrees.

6.6 The Board considers the reasons cogent. It seems unreasonable to expect, as the appellant-opponent suggests, that the appellant proprietor must somehow pre-emptively address detailed objections pertaining to the intermediate generalisation, which only emerged in the course of the oral proceedings. The Board holds that not to allow the appellant-proprietor the opportunity to formulate a suitable response to these more detailed arguments would not be fair.

6.7 Finally, claim 1 now incorporates all features of granted claim 3 and of granted claim 2 on which it depends. Claim 3 corresponds to as filed claim 12, the basis for the feature of slots, which depended directly on as filed claim 2 corresponding to granted claim 2. Consequently, amended claim 1 of the auxiliary request is both a straightforward combination of granted claims as well as of originally filed claims. It is thus immediately evident that both issues of added subject-matter are resolved, without giving rise to further issues. The new request is thus clearly allowable in regard of the added subject-matter.

6.8 In view of the above, the Board considered that the circumstances of the present case were exceptional in the sense of Article 13(2) RPBA 2020 and it therefore decided to admit the appellant-proprietor's auxiliary request 5 into the proceedings.

7. Auxiliary request 5 : inventive step

The appellant opponent raised lack of inventive step as sole objection against claim 1 of this request, starting from A5 in combination with the skilled person's general knowledge

- 7.1 It is not in dispute that the subject matter of claim 1 differs from A5 at least in respect of the feature: "said cleaning means is a vacuum conduited through said chassis and delivered through vacuum slots formed in the lower edge of said lower skids".
- 7.2 As already discussed in conjunction with the novelty of the main request, A5 discloses (see page 7, lines 20 to 25) a vacuum (suction) as cleaning means (not shown in the drawings). However, it is not disclosed that this vacuum is distributed via slots, let alone that these are *in* the skid chassis or that the skid chassis is a conduit for the vacuum. At most, this vacuum cleaning means is merely said to be located *on* the skid chassis 12 of A5's cleaner.
- 7.3 The appellant-opponent has argued that the effect of these difference is to reduce the number of components and that the associated objective technical problem is to simplify the cleaner of A5. The Board agrees with this approach.
- 7.4 The appellant-opponent has furthermore argued that, tasked with this problem, the skilled person would apply their general knowledge and make slots in the skid chassis and conduct the vacuum through the skid chassis - which is hollow - to the slots, thereby arriving at the claimed invention as a matter of obviousness. The Board disagrees.
- 7.5 The Board first notes that, in accordance with established jurisprudence of the Board's of appeal (see CLBA, I.D.5), the question to answer here is not whether the skilled person *could* have modified A5 by providing slits in the chassis and making the chassis a vacuum conduit, but whether, in expectations of the

advantages actually achieved (simplification) they *would* have done so because of prompts in the prior art.

- 7.6 Whilst the skilled person might realise that A5's skid frame must be hollow because it is used as a repository for hydraulic fluids (see page 7, lines 16 to 18), when trying to simplify the cleaner, in the Board's view, it requires a special insight beyond routine skills on the part of the skilled person to repurpose the frame as a vacuum conduit. Nor would this be straightforward, since, as the appellant-proprietor has pointed out, this would require making a new repository for the displaced hydraulic fluids, and would thus complicate the cleaner.

Without using the skid chassis as vacuum conduit there is also no reason to provide vacuum slots in the chassis, nor does the Board have any reason to believe that this would belong to the general knowledge of the skilled person.

- 7.7 For these reasons, the Board is of the opinion that the subject matter of claim 1 of auxiliary request 5 involves an inventive step.

- 7.8 No further objections were raised or are apparent against the claims according to auxiliary request 5.

8. The Board concludes that, for the reasons explained above, the claims meet the requirements of the EPC. But for the necessary adaptation of the description to bring it in line with the new definition of the invention in claim 1, the patent can be maintained with claims according to auxiliary request 5 pursuant to Art 101(3)(a) EPC.

## 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 the form of the Fifth Auxiliary Request (claims 1 - 12) dated 21 January 2021 and as filed during the oral proceedings, and a description to be adapted thereto.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated