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**Datasheet for the decision  
of 7 September 2022**

**Case Number:** T 2626/19 - 3.2.04

**Application Number:** 12813026.7

**Publication Number:** 2760276

**IPC:** A01G31/00

**Language of the proceedings:** EN

**Title of invention:**  
PLANT GROWTH METHOD

**Patent Proprietor:**  
Rockwool International A/S

**Opponents:**  
Knauf Insulation SPRL  
Saint-Gobain Cultilene BV

**Headword:**

**Relevant legal provisions:**  
EPC Art. 100(b), 83, 100(a), 54, 56

**Keyword:**

Sufficiency of disclosure - (yes)

Patentable invention - (yes)

Novelty - (yes)

Inventive step - (yes)

**Decisions cited:**

G 0003/08, T 0570/91, T 0318/18

**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 2626/19 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 7 September 2022**

**Appellant:** Knauf Insulation SPRL  
(Opponent 1) Rue de Maastricht, 95  
4600 Visé (BE)

**Representative:** ARC-IP  
ARC-IP sprl  
Rue Emile Francqui 4  
1435 Mont-Saint-Guibert (BE)

**Respondent:** Rockwool International A/S  
(Patent Proprietor) Hovedgaden 584  
2640 Hedehusene (DK)

**Representative:** Gill Jennings & Every LLP  
The Broadgate Tower  
20 Primrose Street  
London EC2A 2ES (GB)

**Party as of right:** Saint-Gobain Cultilene BV  
(Opponent 2) 2, Zeusstraat  
5048 CA Tilburg (NL)

**Representative:** Saint-Gobain Recherche  
Département Propriété Industrielle  
39 Quai Lucien Lefranc  
93300 Aubervilliers (FR)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 29 July 2019  
rejecting the opposition filed against European  
patent No. 2760276 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

<b>Chairman</b>	A. de Vries
<b>Members:</b>	J. Wright
	T. Bokor
	S. Hillebrand
	C. Heath

## **Summary of Facts and Submissions**

- I. The appeal was filed by the appellant (opponent 1) against the decision of the opposition division to reject the opposition filed against the patent in suit.
- II. Two oppositions were filed against the patent as a whole. The opposition division decided that the subject-matter of the claims as granted was novel and involved an inventive step. It further held that the patent disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.
- III. In a communication dated 30 March 2022, the Board set out its preliminary opinion on the relevant issues. Oral proceedings were duly held before the Board on 7 September 2022 in the absence of appellant-opponent 1 and party as of right, opponent 2, both of which, having been duly summoned, informed the Board that they would not attend in letters respectively dated 1 September 2022 and 25 July 2022.
- IV. The appellant-opponent 1 requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of auxiliary requests 1 to 15 refiled with the grounds of appeal.

The party as of right, opponent 2, made no substantive submissions in the appeal proceedings.

V. Claim 1 of the main request reads as follows:

"A plant growth method, comprising:  
providing a plant growth substrate comprising a man made vitreous fibre (MMVF) slab having a volume in the range 3 to 20 litres and a single MMVF block containing one or more plants on a first surface of the MMVF slab;  
providing the plant growth substrate with water during growth of the one or more plants according to an irrigation strategy which defines a desired water content in the slab,  
wherein the irrigation strategy comprises a first period during which the desired water content is reduced to a minimum level before increasing and a second period during which the desired water content is maintained at a substantially constant level,  
wherein the difference between the minimum level and the constant level expressed as a percentage of the water content required to saturate the plant growth substrate is less than or equal to 25%".

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

- M01 : EP 2 111 746 A
- M02 : Grodan "What to know about the Uni-slab", online brochure, undated
- M04 : Grodan vital brochure "Simple watering for trouble free cultivation"
- M04bis: Gvz Rossat ag/sa web page for Grodan Vital products, undated
- D1 : Andrew Lee, "Steering the root zone environment according to the Grodan® 6- phase Life Cycle", Practical Hydroponics & Greenhouses, January/February 2010, pages 47-53

- D1A: Hidrokultúra 94 Kft.: "Grotop Master termesztőtábla" 2009, Szentes, Hungary
- D5: EP 2 143 321 A
- D6: Jan Van Staalduinen : "Gietfactor richtsnoer voor beurtgrootte", Onder Glas, January 2009, pages 80-81
- D7: Andrew Lee: "Improving tomato fruit Quality", Practical Hydroponics & Greenhouses, May/June 2010, pages 53-59
- D8: Andrew Lee: "water and EC management", Practical Hydroponics & Greenhouses, March/April 2010, pages 48-54
- D9: Brochure Grodan Master Journaal Roos, 1996, pages 1-3
- D10: Uttam K. Saha et al "Irrigation strategies for greenhouse Tomato Production on Rockwool", HortScience vol.43(2) April 2008, pages 484-493

Document cited with appellant-opponent's letter of 1 July 2022: EP 0 628 243

VII. The appellant opponent 1's arguments can be summarised as follows:

The invention as claimed is insufficiently disclosed, it relates to non-technical subject matter which cannot be patented, it lacks novelty and inventive step. Amongst other things, the subject matter of claim 1 lacks inventive step over the combination of M01 with D1 or D1 with M01 or M01 with the skilled person's general knowledge of an irrigation strategy explained by the witness Mr Van Dijk in the opposition proceedings.

VIII. The proprietor-respondent's arguments can be summarised as follows: The appellant-opponent 1's objections are

unfounded. With regard to the combination of M01 with D1 (or vice versa), or the irrigation strategy explained by Mr Van Dijk, M01 relates to producing a flower crop whereas the irrigation strategy of D1 only relates to a tomato crop and the witness only spoke about growing vegetables, so the skilled person would not combine these irrigation strategies with M01's method of growing flowers. The appellant-opponent's submissions of 1 July 2022 are late filed and introduce a new inventive step objection. They should not be admitted into the proceedings.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Background

The patent relates to growing plants in artificial substrates, such as mineral wool (see published patent specification, paragraph [0001]). It is known to provide blocks of substrate material with one or more plants on a slab of substrate material (see paragraph [0006]). In nature (see published patent specification, paragraph [0010]), plant growth has two distinct phases: generative and vegetative growth. During the generative growth phase the plant starts to set and grow fruits. During vegetative growth, the plant predominantly grows green elements such as leaves. It is known (see published patent specification, paragraphs [0013] and [0098] to [0107] with figure 7A) to adopt an irrigation strategy according to which the water content applied to the plant is first reduced, which gives it a "generative impulse" stimulating it to produce flowers, and thus eventually provide fruit. Once initiated, the grower encourages the overall



growth of the plant by increasing water content to a level appropriate for vegetative growth. According to the patent (see for example claim 1, and paragraph [0108] with figures 7A and 7B), it has been found that, surprisingly, when using a single block on a slab, limiting the difference between minimum water content in the generative phase and water content in the vegetative growth phase improves yield whilst saving resources.

3. With its appeal, the appellant-opponent 1 challenged the opposition division's positive findings on sufficiency of disclosure, technicality of the claimed invention, novelty and inventive step of the patent as granted. In its communication in preparation for the oral proceedings, the Board explained why it agreed with the opposition division on the first three issues, on the status of certain pieces of prior art and certain inventive step objections. The relevant parts of the communication read as follows:

*"7. Sufficiency of disclosure, opposition ground under Article 100(b) EPC 7.1*

*7.1 In the Board's view, the invention as claimed is sufficiently disclosed. The appellant-opponent 1 raises a number of objections against the terms desired water content, first period and second period and substantially constant. In the Board's view, at most these question concern the clarity of the claim, which is not an opposition ground.*

*7.2 According to the claim, water is provided according to the desired water content, so the latter is a set point. The Board sees no reason as to why the skilled person would not be able to provide water according to*

such a set point. The patent also gives concrete examples of how much water to supply (see paragraphs [0108] and [0109] with figure 7B). Therefore, the Board holds that this aspect of the invention can be carried out.

7.3 As to the first and second periods, the skilled person, with their mind willing to understand, would understand them to be discrete periods that follow each other. That said, rather than taking a strict literalist approach, the skilled person approaches the claim wording reasonably, with a practical mindset based on everyday experience and practical feasibility. Thus, it is clear to them that, with different water contents being defined in these periods, it will take some time to transition between the two periods. This does not mean they cannot carry out the invention. Rather, they must merely supply water according to the irrigation strategy with its two consecutive periods within the bounds of what is practically feasible.

7.4 Reading the claim giving terms their usual meaning, as the skilled person does, they understand substantially to mean to all intents and purposes, in the main - Oxford English Dictionary online (OED) or being largely but not wholly that which is specified - Merriam Webster online. In the Board's view, with a mind willing to understand, the skilled person will read the claim as requiring water content of the growing medium to be maintained mainly or largely (but not wholly) constant and so carry out this aspect of the invention from the information in the claim alone.

7.5 The appellant-opponent 1 has also argued that the effect of the invention will depend on the difference in water content between the two periods and that this

*might be extremely small. Whether or not this is so might play a role in solving a technical problem. It does, however, not mean that the skilled person cannot carry out the invention, they can still irrigate according to such a scheme, whether this achieves a great or a small effect.*

*7.6 Lastly, since the claim unequivocally defines desired water content in the slab, the Board sees no ambiguity in where water content is to be considered (slab or block), let alone one that could lead to the skilled person not being able to carry out the invention.*

*7.7 For all these reasons, the Board considers that the opposition division correctly found that the invention according to claim 1 is sufficiently disclosed.*

#### *8. Alleged exclusion of the claims from patentability*

*The appellant-opponent 1 argues that the claims do not represent patentable inventions because the essential part of the [independent] claim is a mental act excluded under Article 52(2) (c) EPC. The Board notes that excluded matters are only excluded as such (Article 52(3) EPC). This article does not distinguish between what might be considered an essential or non-essential part of the invention, it is rather understood to refer to what is claimed as a whole, cf. CLBA, 9th edition, 2019, I.A.2.1 and 2.4, and G3/08, reason 10.8.6, in relation to computer implemented inventions. In the present case, it is immediately evident that claim 1 has technical features, for example the first step of providing a plant growth substrate, as correctly explained by the opposition division in its decision (see point II 3.). Therefore,*

*at the very least the claim has overall technical character, so the appellant-opponent 1's argument is moot.*

*The Board furthermore agrees with the respondent-proprietor that in the context of the claim, the feature desired water content is a technical feature because it defines a set-point according to which water is strategically supplied, which is technical rather than merely a mental act.*

#### *9. Status of certain alleged prior art*

##### *9.1 Status of document M02 as prior art*

*M02 is alleged to have been published prior art, though this is not discernible from the document itself. At the oral proceedings before the opposition division, the opponent 1 filed an extract of an opposition decision regarding patent EP2760277 (see minutes, pages 69-72, annex). The extract made reference to a document (D5a) having the same title as M02. In a point 2.9.1, the extract indicated the content of D5a was published on 13 December 2011 as proven by records of [web.archive.org](http://web.archive.org). The opposition division did not admit the extract into the proceedings because it considered the correspondence of the titles was insufficient to establish that the subject matter of M02 was the same as that of D5A.*

*In the grounds of appeal, the appellant-opponent 1 argues that the opposition division exercised its discretion in a wrong way because, amongst other things, it denied a recognised website for retrieving specific content at a specific date.*

*The Board considers that the opposition division correctly exercised its discretion. It did not question the legitimacy of archiving websites for proving publication as the appellant suggests. Rather, it found the extract of an opposition division decision for a different patent (EP2760277) did not prove that the subject matter of M02 and D5a of that case were the same subject matter. This seems reasonable, since the appellant has not presented D5a for comparison. Furthermore, since the archiving evidence has neither been presented in opposition nor in appeal for the present case, it is not possible to examine what specific content was archived, nor, therefore, how it might correspond to M02. For this reason, the Board agrees with the opposition division that M02 is not proven prior art.*

#### *9.2 Disclosure of M04 and M04bis*

*The Board concurs with the opposition division (see impugned decision, point II 6.2) in considering that M04 is prior art. In accordance with established jurisprudence (see CLBA III.G.4.3.4 and for example T 804/05 reasons point 2), on the balance of probabilities, a product brochure dated November 2008 (see bottom of last page) would have been in the public domain long before the priority date more than three years later. However, M04bis is not prior art. The Board agrees with the finding of the opposition division (see impugned decision, point II 6.3) that the mere use of the same trademark in M04 and M04bis does not prove that their technical details must be the same. This is all the more true since M04bis discloses two slab products of the same name but having different volumes. Therefore, the details published in M04bis, such as the volume of either Grodan Vital slab, are not*

*implicit features of M04, as the appellant-opponent 1 has argued.*

## *10. Novelty*

### *10.1 M04*

*The opposition division (see impugned decision, point 7.1) found that the subject matter of claim 1 was novel with respect to M04. The Board agrees. It is not possible to ascertain from the cropped photo on page 1 how the entire growing slab looks. Therefore, there is no direct and unambiguous disclosure of a single block on a slab. Put another way, the fact that the picture shows only one block is irrelevant because the remainder of the slab is not visible. Furthermore, M04 does not disclose the slab volume, nor does the Board see how this might be implicit from what is disclosed in M04. The Board also notes that M04 does disclose the material of the fibres making up the slab or blocks.*

### *10.2 D1*

*The Board sees no disclosure in D1 of a single block on a slab, nor of the volume of the slab (similar to M04). Nor has the appellant-opponent 1 explained in its appeal grounds (see page 10) where these features might be found in D1. As already explained, the mere use of the same trademark in different disclosures does not point to their technical features necessarily being the same. Therefore, any dimensions shown in D1A do not prove the dimensions/ volume of the slabs shown in D1. The Board agrees thus with the opposition division that D1 does not take away novelty of claim 1.*

## *11. Main request, claim 1, inventive step*

[...]

### *11.3 Inventive step starting from D5*

*11.3.1 The appellant-opponent 1 argues inventive step starting from D5 in combination with the skilled person's general knowledge or with D8, by reference to the decision and its reasoning when starting from M01.*

*11.3.2 In the Board's view, D5 is a less promising starting point than M01. In particular, D5 (see abstract) discloses germinating a plant on a first substrate, introducing this to a second substrate and then introducing these two to a third substrate as the plant grows. The opposition division (see impugned decision, page 31 with reference to D5's paragraph [0051]) saw the claimed slab, with its volume of 3 to 20 litres as corresponding to D5's third substrate. Whilst it is true that the volume range of D5's third substrate at least overlaps with that of the claimed slab (0.7 to 45 litres in the abstract and in paragraph [0051] a preferred range of 2-30 litres), this third substrate always has at least the first and second substrate on it because of the sequence in which the plant is transferred. Therefore, in the Board's view, D5's third substrate never has a single block on its surface as claimed.*

*11.3.3 For this reason, the Board considers that the appellant-opponent 1's reasoning starting from M01 cannot be taken as directly applicable to D5. Therefore, the objection is not convincing.*

### *11.4 Inventive step considering common general knowledge*

11.4.1 *The opposition division found (see impugned decision, page 32, from the second paragraph to page 33, first paragraph) that the subject matter of claim 1 involved an inventive step considering the skilled person's general knowledge. Amongst other things, the division considered that it had not been demonstrated that a single block on a slab of MMVF belonged to the skilled person's common general knowledge.*

11.4.2 *In its appeal grounds, the appellant opponent 1 has not convincingly explained why the division erred in this respect, for example in respect of the specific feature of a block on a slab. Rather, the appellant-opponent 1's reference to features being disclosed in multiple documents is not specific and therefore not substantiated.*

[...]

11.5 *Inventive step starting from M04 with M01*

11.5.1 *The appellant-opponent 1 argues that the skilled person, starting from the watering strategy explained in M04 will seek a suitable arrangement on which to implement this watering, such as that of M01 and so arrive at the subject matter of claim 1 as a matter of obviousness. The Board disagrees.*

11.5.2 *Whether or not the watering strategy explained in M04, for example the simple watering graph (second picture on page 3) discloses an irrigation strategy as claimed, this strategy appears to be tailored to the Grodan Vital slab and block arrangement disclosed in that document - see page 3, Simple watering section, line 1: The properties of the Grodan Vital make a*



*multi-facet[t]ed watering policy possible. The appellant-opponent 1 has not explained why this irrigation strategy would also apply to the M01 arrangement.*

*11.5.3 By the same token, it has not been explained why the skilled person would seek a different growing structure than the one shown in M04 on which to implement M04's irrigation strategy. Therefore, the Board is not convinced by the appellant-opponent 1's argument that the subject matter of claim 1 lacks inventive step starting from M04 with M01.*

*11.6 Inventive step starting from Fig. 7A of the patent, D6, D7, D8, D9 or D10 in combination with D4 or D5*

*In its grounds of appeal, the appellant-opponent 1 has explained that it disagrees with this aspect of the impugned decision. However, it has not substantiated specifically why the subject matter of claim 1 might be obvious from any of the 12 combinations suggested. Therefore, the Board considers that these objections have not been sufficiently substantiated. Consequently, the Board does not intend to take them into account in the present proceedings, Article 12(2) and (4) RPBA 2007 with Article 114(2) EPC.*

*11.7 Prior use 2, M02/D5A, M06, M06Bis, M08*

*The appellant-opponent 1 argues (see pages 4 to 9 of its appeal grounds) that the alleged prior use 2 is proven prior art. It likewise argues that documents M02/D5A, M06, M06Bis, M08, M08 [sic] are prior art. However, the appellant-opponent 1 has raised no*

*objections based on any of these. Therefore, whether they are proven to be prior art can be left undecided".*

3.1 The appellant opponent 1 and party as of right opponent 2 did not comment in writing on the Board's provisional opinion. They also did not avail themselves of the opportunity to present their comments at the oral proceedings, which they decided not to attend. In the absence of any such comment from the appellant-opponent 1 or opponent 2, the Board sees no reason to deviate from the opinion expressed in its communication that the invention according to claim 1 is sufficiently disclosed, that the claims are technical and so represent a patentable invention, that M02 is not proven prior art, that M04bis is not prior art, that the subject matter of claim 1 is novel with respect to M04 and D1 and that the appellant-opponent's inventive step objection against claim 1 starting from D5 with general knowledge or D8 or M04 with M01 is not convincing. By the same token, the Board also finds the appellant-opponent 1's inventive step objections against claim 1 based on common general knowledge alone and based on Fig. 7A of the patent, D6, D7, DB, D9 or D10 in combination with D4 or D5 to have not been substantiated. Therefore, it decided not to take these objections into account. Moreover, it can be left undecided whether an alleged prior use 2 (distribution of certain growing substrates by the company Cultilène B. V) and documents M02/D5A, M06, M06Bis, M08 are proven prior art.

4. In the Board's provisional opinion as expressed in its communication the only critical issue was seen to be inventive step when starting from M01 combined with D1 or vice versa, or M01 combined with the skilled person's general knowledge as evidenced by the

testimony of Mr Van Dijk at the opposition proceedings before the opposition division, see sections 11.1 and 11.2 of its communication. For the following reasons the Board at the oral proceedings concluded the presence of inventive step over these combinations.

5. Inventive step starting from M01 in combination with D1

5.1 M01 relates to growing flowers (see claim 1), and thus plants. These are grown according to a method having the step of providing a plant growth substrate comprising a vitreous (mineral) fibre slab (see abstract, paragraph [0001] and claim 1).

M01's slab has a minimum volume from the dimensions given in the description (see paragraph [0041] 5x5x7.5cm) of 0.1875 litres and a maximum volume derivable from the upper values of the dimensions given in the examples (16x30x60cm) of 28.8 litres. The claimed range (3 to 20 litres) therefore represents a selection from M01's known range. In order for a claimed range to be new with respect to a known range, (see CLBA, 9th edition I.C.6.3.1), amongst other things, the selected sub-range should be narrow and should not provide an arbitrary specimen from the prior art, i.e. not be a mere embodiment of the prior description, but another invention (purposive selection).

In the present case, the Board holds that these criteria are not met: The claimed range covers most of the known preferred range. Furthermore, according to the patent, the slab's size need merely be *appropriate* (see the published patent specification, paragraph [0110]), which can but also be the case in M01.

Therefore, the claimed volume of the slab is anticipated by M01's disclosure.

Moreover, M01 discloses (see paragraph [0045]) that the slab may be provided with a single fibre block (in M01's terms, one [or more] units of first mineral wool growth substrate containing a plant.

Therefore, the Board agrees with the appellant-opponent 1 that M01 anticipates providing a growth substrate as claimed.

5.2 However, it is common ground that M01 does not disclose details of an irrigation strategy. At most (see paragraph [0027]), it merely says that a small block allows an irrigation strategy that allows better root development at a first stage. That said, the plants will have to be irrigated in later stages according to some kind of strategy. Therefore, the subject-matter of claim 1 differs from M01 only in the nature of the claimed irrigation strategy: It has a first period where water content (WC) drops to a minimum before increasing and being maintained at a higher WC in a second period, the difference between the minimum and the higher being less than 25% of saturation WC (100%).

5.3 In the Board's view, the objective technical problem is to define a suitable irrigation strategy for M01 that results in a good yield (cf. published patent specification, paragraph [0008]).

5.4 In its communication in preparation for the oral proceedings, the Board gave a provisional opinion (sections 11.1.11) that D1 disclosed an irrigation strategy as claimed (< 25% of saturation difference between a minimum and constant WC) and that faced with

the problem of improving yield the skilled person would combine the teachings of M01 and D1 to arrive at the subject matter of claim 1. That opinion was predicated on the assumption that the skilled person would apply D1's irrigation strategy to M01's growing method.

5.5 In accordance with established jurisprudence (see CLBA, 9th edition, I.D.3.6 and the decisions cited, in particular **T 570/91**, reasons 4.4 and 4.5), although a person skilled in the art is completely free in choosing a starting point, they are then bound by that choice. As already explained, M01 relates to growing flowers, for example roses (see paragraphs [0001] and claims 1 and 5). It is from this prior art that the skilled person considers the objective technical problem, and they are therefore bound by this scenario.

5.6 D1 (see title page) relates to *steering the root zone environment* of hydroponically grown plants, mentioning the importance of applying an irrigation strategy (see page 48, first paragraph). D1 goes on to explain (see page 48, right hand column, section "6-phase model" development phases for plant crops in general including a rose flower crop (see page 48, left hand column, first paragraph). The second paragraph of this section introduces a specific example of a tomato crop. From here on, D1's disclosure only concerns tomatoes. Table 1 (page 49) emphasises this - see title - *A description of the Grodan 6-phase model using a tomato crop planted in Victoria as the example*. D1 goes on to describe an irrigation strategy, to steer the tomato plants through the phases defined in table 1, with the help of tables 2 to 8. Each of these tables reiterates that it concerns tomatoes.

Contrary to how the appellant-opponent argued in its grounds of appeal, page 12, last full paragraph, the Board holds that D1 does not disclose a universal irrigation strategy *which can be adapted for every growing system and plants* [sic]. At most D1 discloses that there is a universal 6-phase model of each *development stage* of crops including roses (page 48, left hand column, page 53, penultimate paragraph) but it only discloses a specific 6-phase development model for tomato plants grown in Victoria (table 1) and a specific irrigation strategy for a tomato crop (tables 2 to 8). Nor does it disclose that this irrigation strategy can be adapted to a different crop, let alone explain how.

- 5.7 Moreover, the Board agrees with the respondent proprietor's argument that it cannot be assumed that the skilled person would apply D1's irrigation strategy for tomatoes in M01's flower growing context. Firstly, this is because different plants require different amounts of water. Secondly, because a flower crop's irrigation strategy would be fundamentally different from one for a tomato crop: In the case of a flower harvest, the goal is to steer plants to producing a crop at the flowering stage whereas for a tomato, the flower is merely an intermediate stage to growing a tomato which, amongst other things, contains much more water than a flower. Thus, the skilled person would not consider that a tomato crop irrigation strategy would necessarily be equally appropriate for a flower crop. Therefore, bound as the skilled person is to starting from M01's flower growing scenario, the skilled person would not apply the specific tomato crop irrigation strategy disclosed in D1 for growing flowers according to the method of M01. It follows that, whether or not the irrigation strategy disclosed in D1's tables 2 to 8

involves reducing water content to a minimum and increasing to a constant level that is less than 25% of saturation as claimed, the teachings of M01 and D1 would not lead the skilled person to the subject-matter of claim 1 as a matter of obviousness.

6. By the same token, the Board reaches the same conclusion when starting from D1 and combining with M01 because, when starting from D1's irrigation strategy for tomatoes grown in a particular substrate the skilled person would not change this for M01's flower growing substrate as a matter of obviousness (cf. D1, page 50, right hand column, paragraph under table 3) - *the choice of substrate [is] part of the overall strategy and [influences dramatically] what can and cannot be done in terms of root zone management*).
7. Main request, claim 1, inventive step starting from M01 in combination with the skilled person's general knowledge as evidenced by the testimony of Mr Van Dijk at the opposition proceedings before the opposition division.

The appellant-opponent 1 has argued that the subject matter of claim 1 lacks inventive step when starting from M01 in combination with an irrigation strategy sketched and described in the testimony of Mr Van Dijk, at the oral proceedings before the opposition division (see minutes, pages 20 to 26, in particular page 26, the penultimate witness statement). There, the witness described the strategy as being *absolutely standard and the norm for 25 to 30 years*.

Directly after this, the witness was asked by the opponent 2 whether it pertained to every kind of crop. The witness replied (minutes page 26, last statement)

that it applied in the vegetable world but that he couldn't tell [opponent 2] anything about flowers. If the Board could take what Mr Van Dijk said regarding common general knowledge at face value, then only for vegetables.

This means that the skilled person would not consider that common general knowledge (assuming that is what it is) when starting from M01 because, as explained above, M01 relates to growing flowers and the skilled person is bound to this scenario when considering inventive step. Thus, whether or not the irrigation strategy sketched and explained by Mr Van Dijk represents common general knowledge and whether or not it might be a commonly known irrigation strategy as in claim 1, it is understood to relate to an irrigation strategy for growing vegetables and the skilled person would thus not apply it to M01's flower growing method as a matter of obviousness. Therefore, the appellant-opponent 1's argument is not convincing.

8. Other inventive step objections brought by the appellant-opponent

In a letter dated 1 July 2022 the appellant-opponent raised new inventive step objections against the main request, amongst others, based on a comparison with an appeal case **T 0318/18** of the present board but in a different composition. In particular, these arguments started from a document EP062843 that had previously not been cited in the present proceedings.

These objections are therefore an amendment to the appellant-opponent 1's case after it has filed its grounds of appeal and may be admitted only at the Board's discretion, Article 13(1) RPBA 2020.



According to Article 13(2) RPBA 2020, any amendment to a party's appeal case made after the expiry of a period specified by the Board in a communication under Rule 100, paragraph 2, EPC or, where such a communication is not issued, 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.

In the present case, the objections were filed well after the Board summoned the parties to oral proceedings and issued its communication. Therefore, they are late filed and their admittance would require the appellant-opponent 1 to have given cogent reasons explaining exceptional circumstances justifying their admittance. It provided no such reasons, neither in writing nor at the oral proceedings before the Board which it chose not to attend. Nor does the Board see why there might be any such exceptional circumstances. For these reasons, the Board decided not to admit these objections into the proceedings, Article 13(1) and (2) RPBA 2020.

9. The Board concludes that the arguments presented by the appellant-opponent have not convinced it that the opposition division (see impugned decision, reasons, section III) erred in finding that none of the grounds of opposition prejudiced the maintenance of the patent as granted. Therefore, the respondent-proprietor's auxiliary requests need not be considered and the Board must dismiss the appeal.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated