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Datasheet for the decision of 12 November 2025

Case Number: T 0284/23 - 3.2.01

Application Number: 18162128.5

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Language of the proceedings: EN

Title of invention:
AN ELECTRICALLY HEATED AEROSOL-GENERATING SYSTEM

Patent Proprietor:
Philip Morris Products S.A.

Opponents:
Nicoventures Trading Limited
JT International S.A.

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Main request, auxiliary requests 1 to 5 - inventive step (no)

Decisions cited:

Catchword:

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Beschwerdekammern

Boards of Appeal

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Case Number: T 0284/23 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 12 November 2025

Appellant: (Patent Proprietor)	Philip Morris Products S.A. Quai Jeanrenaud 3 2000 Neuchâtel (CH)
Representative:	Abitz & Partner Postfach 86 01 09 81628 München (DE)
Respondent: (Opponent 1)	Nicoventures Trading Limited Globe House 1 Water Street London WC2R 3LA (GB)
Representative:	Dehns 10 Old Bailey London EC4M 7NG (GB)
Respondent: (Opponent 2)	JT International S.A. 8 rue Kazem Radjavi 1202 Geneva (CH)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 15 December 2022 revoking European patent No. 3357358 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairwoman	S. Mangin
Members:	B. Spitzer
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The patent proprietor filed an appeal against the decision of the opposition division that the European patent No. 3 357 358 (the patent) is revoked.

II. Oral proceedings took place via videoconference before the Board on 12 November 2025.

III. **The appellant (patent proprietor)** requested that the decision under appeal be set aside and the patent be maintained according to the main request or, as an auxiliary measure, according to auxiliary requests 1 to 5, all requests filed together with its statement of grounds of appeal.

The respondents I and II (opponents 1 and 2) requested that the appeal be dismissed.

IV. All requests have two independent claims, a method claim 1 and a corresponding device claim. This decision refers to the method claim 1.

Independent claim 1 of the **main request** (corresponding to auxiliary request 2A in opposition proceedings) reads as follows (the feature references used by the Opposition Division are included in square brackets):

"1. **[F1]** A method of controlling an electrically heated aerosol-generating device (102) configured to receive an aerosol-generating substrate, **[F1.1]** the device comprising a rechargeable power supply, **[F1.1.1]** a controller, and **[F1.1.2]** at least one electrical heating element (134), **[F1.2]** the method comprising when a user initiates the aerosol-generating device to

generate aerosol carrying out by the controller: **[F1.3]** monitoring the ambient temperature adjacent the device; **[F1.4]** providing power to the heating element (134) from the rechargeable power supply in dependence on the ambient temperature adjacent the device:
[F1.4.1] providing power to the heating element (134), when the ambient temperature adjacent the device is within a pre-determined temperature range; and
[F1.4.2] preventing power being supplied to the heating element (134), when the ambient temperature adjacent the device is below the lower end of the pre-determined temperature range."

Independent claim 1 of **auxiliary request 1** (corresponding to auxiliary request 2C underlying the decision under appeal) corresponds to claim 1 of the main request with the additional features of dependent claim 2 of the main request reading:

"**[F1.4.3]** preventing power being supplied to the heating element (134), when the ambient temperature adjacent the device is above the higher end of the predetermined temperature range."

Independent claim 1 of **auxiliary request 2** (corresponding to auxiliary request 3A underlying the decision under appeal) corresponds to claim 1 of the main request with the following changes:

- feature [F1.1.1] "a controller" has been replaced by feature [F1.1.3] "an indicator",
- feature [F1.2] has been amended by deleting "when a user initiates the aerosol-generating device to generate aerosol carrying out by the controller"
- feature [F1.4.4] has been added:
  "indicating to a user when the ambient temperature adjacent the device is without the pre-determined

temperature range with the indicator."

Independent claim 1 of **auxiliary request 3** (corresponding to auxiliary request 3C underlying the decision under appeal) corresponds to claim 1 of auxiliary request 2 with the additional features of dependent claim 2 of the main request (feature [1.4.3]).

Independent claim 1 of **auxiliary request 4** (corresponding to auxiliary request 4A underlying the decision under appeal) corresponds to claim 1 of the main request with the following added features:

- feature [F1.1.3] "an indicator", and
- feature [F1.4.4] "indicating to a user when the ambient temperature adjacent the device is without the pre-determined temperature range with the indicator."

Independent claim 1 of **auxiliary request 5** (corresponding to auxiliary request 4C underlying the decision under appeal) corresponds to claim 1 of auxiliary request 4 with the additional features of dependent claim 2 (feature [1.4.3]).

V. The documents cited in this decision include the following:

D1: WO 2014/060267 A2
D2: EP 2 043 224 A2
D3: EP 1 530 383 A1
D19: Charge and Discharge Behaviour of Li-Ion Batteries at Various Temperatures Containing LiCoO2 Nanostructured Cathode Produced by CCSO, University of Texas Rio Grande Valley, Y.Y. Mamyrbayeva et al., 2013

D20: Low temperature Li-ion battery ageing, J. F. Nilsson, Uppsala University, September 2014

D21: Lithium-Ion & Lithium Polymer Cells and Batteries Safety Precautions, ULTRALIFE Battery & Energy Products, 1 September 2010

D22: bq2407x Single-Chip Li-Ion Charge and System Power-Path Management IC, Texas Instruments, December 2014

D23: Specification of Product for Lithium-ion Rechargeable Cell, Model : ICR18650-30A, Samsung SDI Co., Ltd., Mobile Energy Division, November 2007

Reasons for the Decision

1. Main request and auxiliary request 1 - lack of inventive step of the subject-matter of claim 1

The subject-matter of claim 1 of the main request and auxiliary request 1 is not inventive.

1.1 The main request and auxiliary request 1 on appeal correspond to auxiliary request 2A and auxiliary request 2C underlying the decision under appeal, respectively.

1.2 Claim 1 of auxiliary request 1 on appeal comprises compared to claim 1 of the main request the following further feature: "*preventing power being supplied to the heating element (134), when the ambient temperature adjacent the device is above the higher end of the pre-determined temperature range.*" (feature [F1.4.3])

1.3 The respondents raised amongst others an inventive-step attack starting from document D1 either combined with

documents D2 or D3 or taking into account the skilled person's common general knowledge as evidenced by documents D19 to D23, D2 or D3.

1.4 The opposition division came to the conclusion that the subject-matter of claim 1 of auxiliary request 2C (corresponding to auxiliary request 1 on appeal) was not inventive starting from document D1 (see decision under appeal, Reasons, point 20.4).

1.5 Since feature [F1.4.3] concerning "power prevention for temperature above higher end" is disclosed in document D1, the problem-solution approach for assessing the inventive step of the subject-matter of claim 1 of the main request and of claim 1 of auxiliary request 1 is the same for both requests, as is the resulting conclusion.

1.6 The Board reaches the same conclusion as the opposition division, namely that the subject-matter of claim 1 of auxiliary request 1 lacks an inventive step starting from document D1. For the same reasons, the subject-matter of claim 1 of the main request does not involve an inventive step starting from document D1. The reasons are set out below.

1.7 Closest prior art and distinguishing features

1.7.1 It is common ground that document D1 is the closest prior art and that the subject-matter of claim 1 of the main request differs from document D1 in that power is prevented from being supplied to the heating element, when the ambient temperature adjacent the device is below the lower end of the pre-determined temperature range (feature [F1.4.2]).

1.7.2 The Board does not agree with the appellant that there are further differentiating features; in particular, it does not accept the appellant's restrictive interpretation of the feature [F1.2].

1.7.3 In the appellant's view, the feature "*when a user initiates the aerosol-generating device*" implied a causal/conditional relationship and "when" had to be interpreted as "in response to". Furthermore, "initiation" did not merely mean that the device was switched on but that a user took a puff which triggered the following method steps. Consequently, the method steps of the controller were in a timely relationship to the user's initiation of the device.

1.7.4 In the Board's view, the appellant's interpretation is not supported by the claim and the corresponding parts of the description. The method steps of the controller, i.e. monitoring ambient temperature and providing or preventing power to the heating element in dependence on the ambient temperature (see features [F1.3], [F1.4], [F1.4.1] and [F1.4.2]) are an ongoing process. As stated by the respondents, the embodiments of the patent also involve periodic and continual temperature monitoring (see patent, dependent claims 3 and 7, where a weighted average temperature is measured; paragraphs [0100] to [0107] and Figure 6). Therefore, the method steps following "*when the user initiates the aerosol-generating device to generate aerosol*" are not triggered only in response to a specific activation of the device. As already reasoned by the opposition division, the wording of claim 1 leaves it open whether monitoring is performed only once when the generation of aerosol is initiated, or continuously.

1.7.5 With regard to the interpretation of the term "to initiate", the Board is of the view that the skilled person is familiar with the concept of "*initiating the aerosol generating device to generate aerosol*", which might be a user interface for turning on the device and activating/adjusting various functions of the device, for instance, activating the generation of an inhalable aerosol, such as activating a heater. Whether an aerosol is actually generated depends on the detected ambient conditions and is not relevant for initiating the device.

1.7.6 Applying the above interpretation of feature [F1.2], document D1 discloses this feature, namely that the ambient temperature is measured when the device is "in use", which is explicitly stated in document D1 and, which involves that the device has been initiated beforehand (see document D1, page 3, lines 1 to 15; page 6, lines 26 to page 7, line 13 and page 8, lines 1 to 2).

1.7.7 Regarding the operability of the controller, the Board concurs with the appellant's view that the controller is not cut off from the energy supply but remains operable when the power is prevented from being supplied to the heater. Otherwise, the controller could not perform the method steps of the ongoing process as disclosed in features [F1.3], [F1.4], [F1.4.1] and [F1.4.2]. Nonetheless, this does not constitute a distinguishing feature. Document D1 discloses a "*wait mode where the vaporiser is disabled*" while "*the device periodically measures the temperature to determine when the ambient temperature is once again safe and fallen below a second safe threshold temperature.*" Thus, in document D1, the controller likewise remains energised

while the heater is cut off.

1.7.8 Document D1 already discloses to disable the vaporiser "*if the ambient temperature gets above a first safe threshold temperature*" (see document D1, page 8, first paragraph; see also feature [F1.4.3] of claim 1 of auxiliary request 1) but does not explicitly teach a lower safe threshold. So in view of the above interpretation of features, the subject-matter of claim 1 of the main request only differs in that power is prevented from being supplied to the heating element, when the ambient temperature adjacent the device is below the lower end of the pre-determined temperatures range (feature [F1.4.2]).

1.8 Technical effect and objective technical problem

1.8.1 In view of this disclosure, the Board shares the view of the respondents and the opposition division that the objective technical problem to be solved is the further improvement of the safe operation of the device.

1.8.2 According to the appellant, the technical effect is that the battery is prevented from high current draws resulting from the heating element being powered at a temperature below a lower temperature threshold. At the same time, by avoiding unnecessary monitoring and disabling of the heater in situations where these control actions are not required, overall power consumption is reduced, and battery lifetime is increased. It referred to paragraph [0105] of the patent disclosing that for temperatures below the lower end of the operational temperature range, the resistance of the heating element would be too low for the battery to supply sufficient current. Furthermore, it referred to paragraph [0026] of the patent where

examples were given for the operational temperature range.

Thus, the appellant defined the objective technical problem as how to improve power control and usage of battery power of an aerosol-generating device.

1.8.3 The Board does not accept the appellant's formulation of the objective technical problem, as it is too narrowly defined; according to the respondents, claim 1 does not specify any corresponding features, like resistance, operable temperature ranges or particular components.

1.9 Obviousness of the solution

1.9.1 The Board shares the respondents' view that document D1 already recognises that a high end cut off based on ambient temperature is provided for safety reasons (see document D1, page 8, lines 1 to 8). In document D1, it is stated that if ambient temperature gets above a first safe threshold temperature, then the device can enter a wait mode where the vaporiser is disabled. Similar disclosure is found on page 4, line 26 to page 5, line 4 of document D1.

1.9.2 There are several reasons why the person skilled in the art not only could but also would have implemented a wait mode for lower safe threshold temperature in document D1.

1.9.3 First, document D1 already recognises the need to provide temperature cut-offs for safety reasons, as evidenced in particular by the following passages:

"*Having a temperature sensor has the advantage that the device can use temperature* readings to provide *a more sophisticated device, implementing operations for both control and safety.*" (document D1, page 1, lines 18 to 20)

"*Having a wait mode when the temperature gets too hot provides added safety for the user and ensures that the user cannot be harmed.*" and "*If the device has exceed a safe operating temperature where damage to the device could have occurred then it is advantageous to disable to device.*" (document D1, page 5, lines 3 to 4 and lines 14 to 15)

"*In addition, the computer monitors the ambient temperature reading from the temperature sensor 18 to determine whether the device is safe for a user to operate.*" (document D1, page 8, lines 1 to 4)

"*This enables the sensor(s) to also act as a safety component in that it/they can provide information to the computer about the temperature of the device which can then signal a cut-out at certain pre-determined temperatures, for example 50 degrees Celcius.*" (document D1, page 10, lines 3 to 6)

1.9.4 Second, on page 10, lines 1 to 6 of document D1, it is disclosed that the sensor(s) also act "*as a safety component in that it/they can provide information to the computer about the temperature of the device which can then signal a cut-out at certain pre-determined temperature**s**, for example 50 degrees Celsius.*" (emphasis added by the Board). In this paragraph, multiple pre-determined temperatures are disclosed.

1.9.5 Last but not least, it is common general knowledge that rechargeable batteries have specified temperatures of operation for charging and discharging, that a skilled person will respect these restrictions when designing a device using such a rechargeable battery. The skilled person knows that there is not only an upper temperature threshold but also a lower temperature threshold. This is not disputed by the appellant and is further reflected in the following documents:

> "*While operating batteries under hot or cold conditions cannot always be avoided, it is necessary to have some control over charge/ discharge process [3]. Efforts must be made to charge and discharge the batteries at moderate temperatures.*" (see document D19, page 302, first column, first paragraph)

> "*With batteries designed for normal temperatures, cycling at low temperature can be rather destructive due to accelerated ageing effects when the sought processes of battery operation are inhibited [14-15].*" (see document D20, page 9, section 3.4.2)

> "*The temperature range over which the battery can be charged is 0°C to 45°C. Charging the battery at temperatures outside this range may cause severe damage to the battery or reduce battery life expectancy.*" (see document D21, section B, page 4)

> "*3.13 Operating Temperature Discharge: -20 to 60°C*" (see document D23, page 1, section 3.13)

> "*Therefore, the present invention is directed to provide a protection circuit for a battery pack, a*

battery pack having the protection circuit and a method of operating the battery pack, for controlling charging/discharging in not only a high temperature region but also a low temperature region, so that charging/discharging is controlled at high ***and low temperatures and the efficiency and safety are secured****."* (see document D2, paragraph [0017], emphasis added by the Board)

"*If the temperature of a rechargeable battery of the mobile device is outside certain specification parameters for too long, the battery may experience permanent damage and require replacement or could even explode.*" (see document D3, paragraph [0003])

1.9.6 The appellant's arguments were the following:

(a) In the appellant's view, the gist of document D1 was to provide consistent heating and vaporisation effect, in particular since the temperature affected the viscosity of the liquid being vaporised (see document D1, page 4, lines 19 to 25). Furthermore, such problems only occurred at high and not at low temperatures.

Document D1 was concerned with neither of the objective technical problems, namely the improvement of power control and the improvement of device safety. The temperature-dependent resistance of the heating element was not discussed at all in document D1. Safety was only addressed in relation to the user, not the device itself (see document D1, page 5, lines 3 to 4).

(b) Although the skilled person knew the operational temperature limits of rechargeable batteries, they

would have switched off the device entirely outside those limits to ensure that no discharge occurred. The appellant disagreed with the suggestion that a small, non-"significant" discharge would still be considered acceptable.

(c) Since document D1 disclosed a wait mode only for high temperatures, and since prior art references particularly emphasised that the battery should not be discharged at all outside these ranges (see document D21, section B2, page 2 and document D23, page 3), there was no motivation for the skilled person to implement a wait mode also for low temperatures.

1.9.7 The Board is not convinced by the appellant's arguments for the following reasons as presented by the respondents and reasoned by the opposition division:

(a) Contrary to the appellant's statement, document D1 is not only concerned with providing consistent heating and vaporizing effect but its general purpose is directed to both control and safety (see document D1, page 1, line 18). Safety is addressed for the user and for the device. These two aspects are interdependent. See also point 1.9.3 above.

(b) In document D1, there is a first safe threshold temperature above which the device enters a wait mode where the vaporiser is disabled and a critical safe temperature above which the device is permanently disabled (see document D1, page 8, lines 1 to 13). Such a distinction is generally known and also addressed in the cited documents. In paragraph [0043] of document D3, it is made clear that the shutdown may be only partial in less

adverse conditions. Paragraphs [0048] and [0049] of document D2 disclose a temporary disablement and also provide a one-time element, such as a fuse, for a permanent cut-off the device.

(c) In view of the common general knowledge as summarised in point 1.9.5 above and in view of the multiple pre-determined temperatures disclosed on page 10, lines 3 to 6, of document D1, the most obvious solution for the skilled person would have been to implement a wait mode also below a low safe threshold temperature. The respondents also referred to page 8, lines 9 to 13 of document D1, where a clear distinction is made between the case where the "vaporiser" is temporarily disabled until the ambient temperature has fallen below a safe threshold, and the case where the entire device is permanently disabled by blowing a fuse on the circuit board. The skilled person would not have deviated from this concept when introducing a lower end of the pre-determined temperature range.

2. Auxiliary requests 2 and 3 - lack of inventive step of the subject-matter of claim 1

The subject-matter of claim 1 of auxiliary request 2 and auxiliary request 3 is not inventive.

2.1 The auxiliary request 2 and auxiliary request 3 on appeal correspond to auxiliary request 3A and auxiliary request 3C underlying the decision under appeal, respectively.

2.2 Claim 1 of auxiliary request 2 on appeal compared to claim 1 of the main request omits the feature of the controller (feature [F1.1]) and the "user initiating

(...)" (feature [F1.2]) and comprises the following further features:

[F1.1.3] an indicator and
[F1.4.4] indicating to a user when the ambient temperature adjacent the device is without the pre-determined temperature range with the indicator.

2.3 Claim 1 of auxiliary request 3 on appeal comprises compared to claim 1 of auxiliary request 2 the following further feature: "*preventing power being supplied to the heating element (134), when the ambient temperature adjacent the device is above the higher end of the pre-determined temperature range.*" (feature [F1.4.3]).

2.4 The respondents raised amongst others an inventive-step attack starting from document D1 either combined with documents D2 or D3 or taking into account the skilled person's common general knowledge as evidenced by documents D19 to D23, D2 or D3.

2.5 The opposition division came to the conclusion that the subject-matter of claim 1 of auxiliary request 3C (corresponding to auxiliary request 3 on appeal) was not inventive starting from document D1 (see decision under appeal, Reasons, point 22.3).

2.6 Since feature [F1.4.3], concerning the "power prevention for temperature above higher end", is disclosed in document D1, the problem-solution approach for assessing the inventive step of the subject-matter of claim 1 of auxiliary request 2 and of claim 1 of auxiliary request 3 is the same for both requests, as is the resulting conclusion.

2.7 The Board arrives at the same conclusion as the opposition division that the subject-matter of claim 1 of auxiliary request 3 is not inventive starting from document D1. In view of point 2.3, consequently, also the subject-matter of claim 1 of auxiliary request 2 is not inventive starting from document D1.

2.8 Closest prior art and distinguishing features

The subject-matter of claim 1 of auxiliary requests 2 and 3 differs from document D1 in features [F1.4.2] ("preventing power being supplied to the heating element, when the ambient temperature adjacent the device is below the lower end of the pre-determined temperature range") and [F1.4.4] ("indicating to a user when the ambient temperature adjacent the device is without the pre-determined temperature range with the indicator").

It is undisputed that document D1 discloses a "signalling unit 51" "*to provide audio or visual outputs to the user indicative of operational conditions of the device.*" However, the examples given in document D1 do not mention the wait mode but indicate when a user draws on the device or when the battery needs to be recharged (see document D1, page 11, lines 15 to 19).

2.9 Technical effect and objective technical problem

The appellant pointed out that the inventive activity was not the choice of the operating condition for the indicator but the indicator clarified that the device was not completely shut off since the indicator still had to be energised, i.e. the whole device needed to be operable if the indicator/LED should convey a specific

information to the user. The objective technical problem was - similar to that for the main request - improving power control and improving the overall handling of an aerosol-generating device.

The Board is not convinced by the appellant's formulation of the objective technical problem. The above-mentioned problem is already solved by the feature [F1.4.2] ("preventing power being supplied to the heating element, when the ambient temperature adjacent the device is below the lower end of the pre-determined temperature range") of claim 1 of the main request. The Board concurs with the respondents that the only issue was to choose a suitable operational condition for the signalling unit disclosed in document D1.

2.10 Obviousness of the solution

2.10.1 The Board shares the respondents' view that the wait mode is one operational condition in document D1 and therefore, the skilled person would have chosen in an obvious way the wait mode as a further example for the signalling unit and as such implemented feature [F1.4.4] in document D1.

2.10.2 The appellant essentially argued as follows.

(a) It emphasised that the device needed to be operable to indicate to a user when the ambient temperature adjacent the device was without the pre-determined temperature range with the indicator. Since the skilled person would not have implemented the wait mode for low temperatures, there was no power for an indicating device and as such no improvement for

the usability of the device.

(b) Furthermore, the wait-mode was a low energy mode and the skilled person would, therefore, be discouraged from consuming power for an indicator. Document D1 even led away from the claimed subject-matter by disclosing to avoid any power consumption in high temperature conditions.

2.11 The appellant's arguments are not convincing to the Board.

(a) In the wait mode the device in document D1 is still operable. So there is enough power for the indicator in document D1.

(b) The "wait mode" in document D1 is not disclosed as a low power mode as alleged by the appellant, but merely as "*a lower power mode compared to a normal operating mode*" (see document D1, page 4, lines 26 to 28). Since the heater is not energised, the wait mode is already, for that reason, a lower power mode than the normal operating mode. Thus, this would not have deterred the skilled person from implementing an indicator/LED, which in any event consumes very little energy.

3. Auxiliary requests 4 and 5 - lack of inventive step of the subject-matter of claim 1

The subject-matter of claim 1 of auxiliary request 4 and auxiliary request 5 is not inventive.

3.1 The auxiliary request 4 and auxiliary request 5 on appeal correspond to auxiliary request 4A and auxiliary request 4C underlying the decision under appeal,

respectively.

3.2 Claim 1 of auxiliary request 4 is a combination of the features of claim 1 of the main request and claim 1 of auxiliary request 2.

3.3 Compared to claim 1 of auxiliary request 4, claim 1 of auxiliary request 5 comprises the feature relating to the "power prevention for temperature above higher end" (feature [F1.4.3])

3.4 The respondents raised amongst others an inventive-step attack starting from document D1 either combined with documents D2 or D3 or taking into account the skilled person's common general knowledge as evidenced by documents D19 to D23, D2 or D3.

3.5 The opposition division came to the conclusion that the subject-matter of claim 1 of auxiliary request 4C was not inventive starting from document D1 (see decision under appeal, Reasons, point 24.2).

3.6 Since feature [F1.4.3], concerning the "power prevention for temperature above higher end", is disclosed in document D1, the problem-solution approach for assessing the inventive step of the subject-matter of claim 1 of auxiliary request 4 and of claim 1 of auxiliary request 5 is the same for both requests, as is the resulting conclusion.

3.7 Since neither feature [F1.4.3] concerning the "prevention of power for temperature above higher end" nor feature [F1.4.4] regarding the "indicating" add any inventive activity (see points 1.9 and 2.10), the conclusion of lack of inventive step for the subject-matter of claim 1 of the main request and auxiliary

request 2 apply as well to the subject-matter of claim 1 of auxiliary request 4.

3.8 In view of point 3.4, the subject-matter of claim 1 of auxiliary request 5 also lacks an inventive step.

4. Overall conclusion

Since the subject-matter of claim 1 of the main request and auxiliary requests 1 to 5 is not inventive, these requests do not comply with the requirements of the EPC and are not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairwoman:

D. Grundner S. Mangin

Decision electronically authenticated