Internal distribution code:

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

Datasheet for the decision of 11 March 2025

Case Number: T 0322/23 - 3.2.05

Application Number: 08806561.0

Publication Number: 2195170

IPC: B41J2/175, B41J2/185

Language of the proceedings: EN

Title of invention:
Ink jet printer

Patent Proprietor:
Videojet Technologies, Inc.

Opponents:
Domino UK Limited
Dover Europe Sarl

Relevant legal provisions:
EPC Art. 56, 83
EPC R. 115(2)
RPBA 2020 Art. 12(3), 12(5), 12(6), 15

Keyword:

Inventive step (yes) - could-would approach
Sufficiency of disclosure (yes)
Statement of grounds of appeal - reasons set out clearly and concisely (no)
Reply to statement of grounds of appeal - reasons set out clearly and concisely (no)
Discretion not to admit submission - submission admitted (no)
Summons to oral proceedings - continuation of proceedings without duly summoned party
Late-filed objection - admitted (no)

Europäisches Patentamt
European Patent Office
Office européen des brevets

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

Case Number: T 0322/23 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 11 March 2025

Appellant: (Opponent 2)	Dover Europe Sarl Chemin de Blandonnet 10 1214 Vernier (CH)
Representative:	Regimbeau 20, rue de Chazelles 75847 Paris Cedex 17 (FR)
Respondent: (Patent Proprietor)	Videojet Technologies, Inc. 1500 Mittel Boulevard Wood Dale, IL 60191-1073 (US)
Representative:	Marks & Clerk LLP 15 Fetter Lane London EC4A 1BW (GB)
Party as of right: (Opponent 1)	Domino UK Limited Trafalgar Way Bar Hill Cambridge Cambridgeshire CB23 8TU (GB)
Representative:	Reddie & Grose LLP The White Chapel Building 10 Whitechapel High Street London E1 8QS (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 5 December 2022 concerning maintenance of the European Patent No. 2195170 in amended form.**

Composition of the Board:

Chairman	P. Lanz
Members:	C. Kujat
	F. Blumer

Summary of Facts and Submissions

I. The patent proprietor and opponent 2 appealed against the interlocutory decision of the opposition division finding that, account being taken of the amendments made by the patent proprietor during the opposition proceedings in accordance with the ninth auxiliary request, European Patent No. 2 195 170 (the patent) and the invention to which it related met the requirements of the EPC.

II. The following documents submitted during the opposition proceedings are cited in this decision.

D1 US 6,938,976 B2
D3 US 2002/0012016 A1
D4 EP 0 882 595 A2
D5 US 4,639,738
D8 US 6,648,434 B2
D14 US 6,565,198 B2
D20 US 6,454,381 B1

III. Opponent 2 filed their statement of grounds of appeal on 16 April 2023. By letter dated 30 August 2023 opponent 2 filed further submissions.

IV. By letter dated 29 August 2023, the patent proprietor replied to opponent 2's statement of grounds of appeal and submitted, inter alia, the claim set according to auxiliary request 26 which corresponds to the ninth auxiliary request underlying the impugned decision. By letter dated 5 July 2024 the patent proprietor filed a further submission.

V. The opponent 1, which is a party to the appeal proceedings as of right under Article 107, second sentence, EPC, filed their submissions by letters dated 29 August 2023 and 9 October 2024.

VI. The parties were summoned to oral proceedings scheduled for 11 March 2025.

In a communication under Article 15(1) RPBA the Board set out its preliminary opinion.

By letter dated 10 March 2025, opponent 2 informed the Board that they would not be attending the oral proceedings.

VII. Oral proceedings before the Board were held on 11 March 2025 by video-conference in the absence of opponent 2. During the oral proceedings, the patent proprietor withdrew their appeal. They also withdrew all requests ranking higher than auxiliary request 26. Also during oral proceedings, opponent 1 withdrew all of their requests.

VIII. The parties' final requests were as follows.

The opponent 2 (appellant) requested that the impugned decision be set aside and that the patent be revoked.

The patent proprietor (respondent) requested that the appeal of opponent 2 be dismissed or that the patent be maintained in amended form on the basis of any one of auxiliary requests 27 to 29.

IX. Claim 1 of auxiliary request 26 reads as follows (the amendment with respect to claim 1 of the patent is underlined):

"A continuous ink jet printer (1) comprising:
a printing fluid cartridge receiving portion (205, 305) arranged to receive a printing fluid cartridge (2, 3) and to allow passage of printing fluid from a received printing fluid cartridge to printing fluid conduits of the ink jet printer;
a data reader (206) arranged to read data indicating a quantity of fluid within a received cartridge from an electronic data storage device (201) associated with the received printing fluid cartridge (2, 3); and
a controller (6) arranged to determine a quantity of fluid within said printing fluid cartridge (2, 3) based upon a negative pressure within said printing fluid cartridge and to generate (S53) update data usable to modify data stored on said electronic data storage device (201) based upon said determination and to modify (S54) data stored on said electronic storage device based upon said update data such that data stored on said electronic data storage device (201) indicates an updated quantity of fluid in said printing fluid cartridge (2, 3)."

X. The parties' relevant arguments can be summarised as follows.

(a) *Inventive step*

(i) *Opponent 2*

The subject-matter of claim 1 of auxiliary request 26 (which corresponds to the ninth auxiliary request underlying the impugned decision) did not involve an

inventive step in view of a combination of documents D1 and D3, or document D8 alone, or the combinations of document D8 and the common general knowledge or document D20, or a combination of documents D4 and D5, or the combinations of documents D5 and D8 or D14.

The skilled person would readily combine the teachings of documents D1 and D3. Document D1 disclosed a CIJ ("continuous inkjet") printer with mechanical sensing of ink levels. Document D3 stated that detecting mechanisms may be disadvantageous in respect of accuracy. Accordingly, it would be known to the skilled person that measurement of ink levels of the printer of document D1 may have accuracy issues, and it would be obvious to try to use the teachings of document D3 to improve the printer of document D1. The objective technical problem was the provision of a more accurate method of determining the quantity of fluid within the printing fluid cartridge. Paragraph 20 of document D3 taught a pressure decrease via a differential pressure. While the opposition division had concluded that this pressure differential was between the pressurized air supply (a positive pressure) and the ink tube, it would be clear that pressure sensor 131 of document D3 determined the negative pressure differential indicated from a negative pressure within the ink cartridge. Claim 1 did not contain any requirement to measure the negative pressure directly within the fluid cartridge.

With regard to documents D4 or D5, they stated without further argument that the opposition division had erred in its finding that the claimed subject-matter was based on an inventive step.

Document D8 was a promising starting point for assessing inventive step. The only arguable difference

was that the pressure in document D8 is not negative. This would not establish any technical effect or provide any advantage. Measuring a negative pressure belonged to the common general knowledge of the skilled person in relation to any kind of inkjet printer. Document D20 mentioned the term "back pressure", which according to the opposition division would be known in the art as a synonym for negative pressure in the field of fluid cartridges. No inventive step would be required to apply the teachings of documents D8 or D20 to CIJ printers.

Reference was made to all their arguments previously submitted to the opposition division, and in particular those in their letter of 22 July 2022, and also all previously submitted arguments of opponent 1 were adopted.

(ii) Patent proprietor

The subject-matter of claim 1 of auxiliary request 26 involved an inventive step.

Document D3 disclosed a positive pressure ink delivery mechanism, which applied a positive pressure (with respect to the ambient pressure) to collapsible ink bag 114.

The reasons set out in their statement of grounds of appeal in the context of the eighth auxiliary request would also apply to auxiliary request 26. With regard the eighth auxiliary request, they argued that document D8 was not a suitable starting point as it did not relate to CIJ printers, but to DOD ("drop on demand") printers, and thus, belonged to a different technical field.

Concerning documents D4 or D5, opponent 2 had failed to provide any explanation as to how the decision was defective. In accordance with the "Case Law of the Boards of Appeal of the European Patent Office" (CLBoA), 10th edition, July 2022, V.A.2.6.5, the maintenance of first-instance submissions should not replace an explicit account of the legal and factual reasons for the appeal. This inventive step objection should not be admitted.

(iii) Opponent 1

They relied on all arguments and documents presented during the opposition procedure, and resubmitted their grounds of opposition and their final written submissions as Annexes A and B with their letter of 29 August 2023.

(b) Sufficiency of disclosure

(i) *Opponent 2*

The reasons set out in their statement of grounds of appeal as to why the requirements of Article 83 EPC were not met for the former eighth auxiliary request also applied to auxiliary request 26 (which, as stated above, is identical with the ninth auxiliary request underlying the impugned decision).

The first objection under Article 83 EPC was that an undue burden was placed on the skilled person to determine how to perform any of the embodiments of the invention, let alone all of the embodiments, because the patent did not disclose at least one way of performing the invention. The patent did not enable the

skilled person to determine a quantity of fluid within a printing fluid cartridge based on a pressure within the cartridge. The general rule of thumb that "the negative pressure increases as quantity of solvent decreases" mentioned in paragraph [0102] of the patent was not sufficient information to determine the actual quantity of fluid within a cartridge.

As a second objection under Article 83 EPC, the patent did not disclose how to measure a negative pressure in an ink cartridge and/or a solvent cartridge.
- With regard to the configuration of the cartridges, only the ink cartridge was described in the patent as comprising a relatively hard outer casing and a relatively flexible inner vessel, but no information was given about the structure of the solvent cartridge. It would not be immediately clear to the skilled person that also the solvent cartridge comprised a relatively hard outer casing and a relatively flexible inner vessel, and thus, that the pressure measurement disclosed in the context of a solvent cartridge could be applied to an ink cartridge.
- With regard to the pressure measurement, paragraph [0105] of the patent did not disclose how to measure negative pressure of an ink cartridge. A pressure measurement in the ink supply line did not relate to pressure within the printing fluid cartridge. The step S52 described in paragraph [0102] of the patent did not relate to a measurement of pressure within the cartridge, but to a pressure differential between pressure within the cartridge and pressure external to the cartridge. The patent did not disclose how the pressure within the cartridge was measured or with what apparatus.
- With regard to the determination of a quantity of fluid, the patent did not disclose how to convert a

negative pressure into a fluid level. There was nothing in the patent which would suggest that there is a direct link in the sense of a specific relationship between the ink level and the pressure.

The third objection under Article 83 EPC alleged that the opposition division had applied different levels of skill to the skilled person when considering sufficiency and inventive step in respect of the term "negative pressure", because claim 1 of the ninth auxiliary request underlying the impugned decision (now: auxiliary request 26) could either be sufficiently disclosed or inventive, but not both. The opposition division had ascribed a level of knowledge to the skilled person that would not teach them to apply negative pressure measurements to the device of document D8.

In addition to the above, opponent 2 referred to all of their previously submitted arguments with respect to the sufficiency of claim 1 of the former eighth auxiliary request, to pages 7 to 14 of their submission of 22 July 2022 to the opposition division, and to paragraph 15.3 of the impugned decision.

(ii) Patent proprietor

The requirements of Article 83 EPC were met for the reasons given in the impugned decision.

The disclosure of the patent was aimed at the skilled person, and this person may use their common general knowledge to supplement information contained in the application. According to the case law of the Boards of Appeal, an objection of lack of sufficiency of disclosure presupposed that there were serious doubts

substantiated by verifiable facts. The opponent 2 had done nothing to raise serious concerns and failed to present any verifiable facts that would cast doubt on whether the claimed invention could be considered as enabled on the basis of the disclosure of one worked example. Further, there was an important difference between the skilled person considering inventive step and sufficiency, because only for the aspect of sufficiency they also knew the teaching of the patent.

Paragraph [0033] and figure 2 of the patent disclosed a pressure transducer 66 for measuring pressure in the solvent line 2 which is indicative of the pressure within solvent cartridge 3. The skilled person would readily understand that the operations described for solvent could be applied to ink, in particular since paragraph [0105] of the patent provided an explicit pointer thereto. Paragraph [0102] of the patent taught the general trend that negative pressure increases as the quantity of solvent decreases, while a specific characteristic may vary from one cartridge configuration to another. However, there was no requirement in claim 1 that the controller determined the volume of fluid to a high degree of accuracy.

(iii) Opponent 1

They relied on all arguments and documents presented during the opposition procedure, and resubmitted their grounds of opposition and their final written submissions as Annexes A and B with their letter of 29 August 2023.

Reasons for the Decision

1. Oral proceedings in the absence of the appellant

In accordance with Rule 115(2) EPC, if a party duly summoned to oral proceedings before the EPO does not appear as summoned, the proceedings may continue without that party. Pursuant to Article 15(3) RPBA, the Board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of a party duly summoned, who may then be treated as relying only on its written case.

In the case in hand, all parties requested oral proceedings as an auxiliary measure. By letter of 10 March 2025, opponent 2 announced that they would not be attending the oral proceedings scheduled for 11 March 2025. The oral proceedings before the Board were held in the absence of opponent 2.

By not attending these oral proceedings, opponent 2 effectively chose not to avail itself of the opportunity to present its observations and counterarguments orally but instead to rely on its written submissions. The Board was in a position to announce a decision at the conclusion of the oral proceedings, in accordance with Article 15(6) RPBA.

2. Auxiliary request 26 - inventive step (Article 56 EPC)

Auxiliary request 26 corresponds to the ninth auxiliary request underlying the impugned decision. With regard to that request, opponent 2 submits that the subject-

matter of claim 1 does not involve an inventive step in view of a combination of documents D1 and D3, or document D8 alone, or the combinations of document D8 and the common general knowledge or document D20, or a combination of documents D4 and D5, or the combinations of documents D5 and D8 or D14.

2.1 *Combination of documents D1 and D3*

It is common ground between the parties that the term "negative pressure" in claim 1 relates to pressure below atmospheric pressure, and that the controller in document D1 is not arranged to determine the quantity of fluid within the printing fluid cartridge based upon a negative pressure within the printing fluid cartridge.

According to opponent 2, the objective technical problem is the provision of a more accurate method of determining the quantity of fluid within the printing fluid cartridge.

Even if this formulation of the objective technical problem were to be accepted, the objection would not be persuasive. When considering whether or not claimed subject-matter constitutes an obvious solution to an objective technical problem, the question to be answered is whether or not the skilled person, in the expectation of solving the problem, would have modified the teaching in the closest prior-art document in the light of other teachings in the prior art so as to arrive at the claimed invention (see CLBoA, I.D.5.). The Board is not convinced that the skilled person would have modified the teaching of document D1 in the light of document D3 for the following reasons.

The closest prior art document D1 discloses a pumping assembly 34 located between the ink reservoirs 14 a-d and the printhead 22, see figure 1 of the document. In the absence of any teaching that the pressure within these ink reservoirs exceeds atmospheric pressure, the Board shares the patent proprietor's view that the pumping assembly 34 sucks the ink from the ink reservoirs by generating sub-atmospheric pressure in the supply lines from the ink reservoirs to the pumping assembly. This leads to sub-atmospheric pressure within the ink reservoirs of document D1.

In contrast, as pointed out by the patent proprietor in item 73 of their reply of 29 August 2023, document D3 discloses the use of a positive pressure ink delivery mechanism. According to figure 1 of that document, a collapsible ink bag 114 inside ink supply container 112 is externally pressurized by air pressure source 115 connected through air supply tube 113. In the Board's view, this pressurization implies that air pressure source 115 exerts super-atmospheric pressure through air supply tube 113 to the collapsible ink bag 114. As that air pressure causes ink to be expelled into ink supply tube 122 (and ultimately to print head 120), the pressure level in the ink supply tube 122 must also exceed atmospheric pressure. As this is confirmed by paragraph [0020] of the document ("pressure in the ink supply tube 122 is approximately equal to the air pressure supplied on tube 113"), the Board does not share opponent 2's view that document D3 would disclose a negative pressure within the ink cartridge, see paragraph 6.33 of their statement of grounds of appeal.

According to paragraph [0016] of document D3, a differential pressure sensor 131 is coupled to air supply tube 113 and to ink supply tube 122. Whether or

not the pressure differential between the pressure levels in these two tubes corresponds to a negative pressure is immaterial in the Board's view, since differential pressure sensor 131 is based on a system architecture which requires two input pressures at its two pressure ports, see the two lines in figure 1 which couple sensor 131 to tubes 113 and 122. In use, each of these pressure ports is connected to super-atmospheric pressure in one of the two tubes, and thus, the sensor is used for a differential pressure measurement between two super-atmospheric pressures. That differential pressure sensor cannot be used without modification in the ink jet printer known from document D1, where a single sub-atmospheric pressure within one of the ink reservoirs 14 a-d would need to be detected. In their written submissions, opponent 2 neither explained which of the two pressure ports of differential pressure sensor 131 must be connected to these ink reservoirs, nor what needs to be done with the other pressure port of the sensor. In the absence of any explanation to that effect, the Board is not convinced by opponent 2's arguments that the skilled person would have combined documents D1 and D3 in an obvious manner.

Instead, although a skilled person could have combined documents D1 and D3, they would not have done so in an obvious manner due to the different system architectures in these documents. Therefore, the subject-matter of claim 1 of auxiliary request 26 involves an inventive step in view of a combination of documents D1 and D3.

2.2 *Document D8 as closest prior art*

In its communication, the Board was of the preliminary opinion that the objections starting from document D8

as closest prior art were not convincing. The Board presented the following preliminary view (see paragraph 4.3.1 of the communication):

"The impugned decision, see paragraph 16.3.1, concluded that document D8 does not disclose a continuous ink jet (CIJ) printer. The board is inclined to share this view, since document D8 seems to be directed to a drop on demand (DoD) inkjet printer (column 4, lines 20-24). In that respect, the board does not share opponent 2's position that there is no difference resultant from the claimed features between a CIJ and a DoD printer. Instead, claim 1 seems to implicitly comprise the essential elements of a CIJ printer, i.e. means for continuously producing ink droplets, a charge electrode and deflection plates, as well as a gutter and means for recirculating ink, see paragraphs 2 and 3 of the patent in suit.

According to established jurisprudence, a person skilled in the art is completely free in choosing a starting point, but would of course be bound afterwards by that choice, see CLBoA, 10th edition 2022, I.D.3.6. By choosing a certain type of printer, the framework of a further development is defined within this particular type, and thus, the skilled person starting from the drop on demand printer of document D8 will leave that framework by changing the printer type into a continuous inkjet printer. It therefore appears immaterial whether "there is nothing that would prevent the skilled person from applying the teaching of D8 to any type of inkjet printer" (opponent 2's statement of grounds of appeal, paragraph 5.21). In their reply of 30 August 2023, see paragraph 4.29, opponent 2 seems to argue that when starting from document D8, the skilled person would start from a generic inkjet printer. There

is no indication in the Minutes (see paragraph 39) that this argument was presented during oral proceedings. In the board's preliminary view, this shows that the argument was not submitted in the proceedings leading to the decision under appeal. A correction of the Minutes and/or the Decision in that respect has not been requested. No circumstances of the appeal case have been indicated which would justify the admittance. The board is therefore inclined not to admit the argument, Article 12(6) RPBA."

As opponents 1 and 2 refrained from further comments, the Board confirms its provisional opinion that the objections starting from the DOD inkjet printer of document D8 are not convincing. The factual allegation that D8 also discloses a generic inkjet printer was not admitted.

2.3 *Documents D4 or D5 as closest prior art*

In its communication, the Board was of the preliminary opinion that these objections should not be admitted. The Board presented the following preliminary view (see paragraph 4.3.2 of the communication):

"With regard to the objections based on documents D4 or D5 as alternative starting points, opponent 2 only states that the opposition division erred, see paragraphs 6.40 and 6.43 of their statement of grounds of appeal. In the absence of arguments where or why the division erred, the board would like to remind the parties that the statement of grounds of appeal (and the reply) shall contain a party's complete appeal case, Article 12(3) RPBA. Pursuant to Article 12(5) RPBA, the board is therefore inclined not to admit these objections."

As opponents 1 and 2 refrained from further comments, the Board did not admit the objections starting from documents D4 or D5.

2.4 Opponent 1 refers in a sweeping manner to their submissions made before the opposition division, which they would like to maintain in appeal. In accordance with established jurisprudence, see CLBoA, V.A.2.6.5, the Board does not consider such references, since this leaves it entirely to the Board to conjecture in what respect they might consider the decision under appeal to be defective. This also applies to opponent 2's reference to their arguments submitted to the opposition division with their letter of 22 July 2022, or to their indication to adopt all previously submitted arguments of opponent 1.

3. Auxiliary request 26 - sufficiency of disclosure (Article 83 EPC)

Auxiliary request 26 corresponds to the ninth auxiliary request underlying the impugned decision. With regard to that request, opponent 2 submits that claim 1 contravenes Article 83 EPC.

3.1 Article 83 EPC stipulates that the application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. The claimed subject-matter must be sufficiently disclosed in the patent document as a whole, including examples, and taking into account the skilled person's common general knowledge. At least one way of enabling the person skilled in the art to carry out the claimed invention must be disclosed, but this is sufficient only if it allows the claimed invention

to be performed without undue burden in the whole range claimed (see CLBoA, II.C.1.). According to established case law of the Boards of Appeal, a successful objection of insufficient disclosure presupposes that there are serious doubts, substantiated by verifiable facts (see CLBoA, II.C.9.).

Regarding opponent 2's first objection under Article 83 EPC, which asserts that an undue burden was placed on the skilled person to determine how to perform any of the embodiments of the invention, the Board disagrees with their assertion that no way of performing the invention was disclosed. Instead, the passages referred to by the patent proprietor, i.e. paragraphs [0033], [0102] and [0105], as well as figure 2 of the patent, disclose that pressure transducer 66 measures the pressure in solvent line 65, and that this pressure is indicative of the pressure within solvent cartridge 3. From paragraph [0105], the skilled person understands that the operations described for solvent can be applied to ink, and thus, they can act accordingly. With regard to the conversion of the measured pressure into a fluid level, the opposition division came to the conclusion that this belongs to the knowledge of the skilled person, see the second full paragraph on page 15 of the impugned decision. In their statement of grounds of appeal, see paragraph 5.5, opponent 2 acknowledges that there is a general rule of thumb that "the negative pressure increases as quantity of solvent decreases", but does not explain why this rule is not sufficient for determining the actual quantity of fluid within the cartridge. In the Board's view, the general trend mentioned in paragraph [0102] of the patent that the negative pressure increases as the quantity of solvent decreases enables the skilled person to convert a measured pressure into a fluid level. Opponent 2 did

not provide any verifiable fact to the contrary, i.e. that it would create an undue burden for the skilled person.

3.2 As a second objection, opponent 2 contends that the requirements of Article 83 EPC were not fulfilled, as the patent did not disclose how to measure a negative pressure in an ink cartridge and/or a solvent cartridge. In accordance with the patent proprietor's view, the Board holds that the person skilled in the art knows that pressure transducers are used for determining sub-atmospheric, i.e. negative pressures. While there is indeed no specific information in the patent on the configuration of the solvent cartridge, this aspect is immaterial for the actual pressure measurement. As correctly pointed out by opponent 2, the pressure transducer 66 is not located in the solvent cartridge, but in the solvent supply line 65, see paragraph [0039] and figure 2 of the patent. With regard to that location of the pressure transducer, opponent 2 did not provide any verifiable fact that the pressure measured in a supply line downstream of the cartridge differs significantly from the pressure within the cartridge, or which physical effect would lead to such difference. The Board is therefore not convinced by opponent 2's argument that a pressure measurement in the ink supply line does not relate to pressure within the ink cartridge, or to a pressure differential between pressure within the cartridge and pressure external to the cartridge.

3.3 The third objection under Article 83 EPC alleged that the opposition division had applied different levels of skill to the skilled person when considering sufficiency and inventive step in respect of the term "negative pressure", because claim 1 of the ninth

auxiliary request underlying the impugned decision (now: auxiliary request 26) could either be sufficiently disclosed or inventive over document D8, but not both. This objection does not convince the Board, because its positive conclusion on inventive step over document D8 is not based on the skilled person's level of knowledge, but on the premise that the skilled person starting from the drop on demand printer in that document would not leave that framework by changing the printer type into a continuous inkjet printer, see above.

3.4 Further, opponent 2 refers to all of their previously submitted arguments with respect to the sufficiency of claim 1 of the former eighth auxiliary request and to their submission of 22 August 2022 made before the opposition division, which they would like to maintain in appeal. In accordance with established jurisprudence, see CLBoA, V.A.2.6.5, the Board does not consider such references, since this leaves it entirely to the Board to conjecture in what respect opponent 2 might consider the decision under appeal to be defective. This also applies to opponent 1's reference to their submissions made before the opposition division, which they would like to maintain in appeal.

3.5 Furthermore, opponent 2 refers in a sweeping manner to paragraph 15.3 of the impugned decision, but does not indicate where or why the opposition division erred. This is contrary to the requirements of Article 12(3) RPBA, which stipulates that the statement of grounds of appeal (and the reply) shall contain a party's complete appeal case. The Board therefore does not admit this objection pursuant to Article 12(5) RPBA.

3.6 In light of the foregoing, the Board reaches the same conclusion as the opposition division (see paragraph 15.3 of the impugned decision) and concludes that the claims of the auxiliary request 26 meet the requirements of Article 83 EPC.

4. Summary

In conclusion, the Board finds that the decision was right to hold that the patent discloses the invention defined in claim 1 of what is now auxiliary request 26 in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Article 83 EPC, and that the subject matter of claim 1 of that request involves an inventive step, Article 56 EPC.

The appeal thus fails on all points.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Wille P. Lanz

Decision electronically authenticated