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**Datasheet for the decision
of 24 June 2026**

Case Number: T 0603/23 - 3.4.03

Application Number: 06741539.8

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Language of the proceedings: EN

Title of invention:
LIGHT-EMITTING MODULE

Patent Proprietor:
Signify Holding B.V.

Opponent:
Ghost IP GmbH

Relevant legal provisions:
EPC Art. 100(c), 84, 123(2), 123(3), 56
EPC R. 103(1)(a)
RPBA 2020 Art. 12(4), 12(6)

Keyword:

Grounds for opposition - subject-matter extends beyond content
of earlier application - granted patent (yes)

Auxiliary request 1 (patent as maintained) - meets
requirements of EPC

Substantial procedural violation - (no)



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0603/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 24 June 2026

Appellant: Signify Holding B.V.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 16 January 2023
concerning maintenance of the European Patent
No. 1891671 in amended form.

Composition of the Board:

Chair T. Häusser
Members: M. Papastefanou
G. Decker

Summary of Facts and Submissions

- I. Both the opponent and the patent proprietor filed an appeal against the decision of the opposition division maintaining the European patent no. 1 891 671 in amended form.
- II. The opposition was based on all grounds for opposition under Article 100(a), (b) and (c) EPC. In the decision under appeal, the opposition division concluded that claim 1 of the patent as granted contained added subject-matter and could not be maintained (Article 100(c) EPC). Auxiliary request 1 was found to meet the requirements of the EPC and the patent was maintained on that basis.
- III. The following documents are referred to:
- D5: EP 1 182 396 A1
D6: ES 1 058 065 U
D7: EP 0 669 492 A1.
- IV. The appellant/patent proprietor ("proprietor") requested that
- the decision under appeal be set aside, the board find that the patent as granted fulfils the requirements of Article 123(2) EPC and the case be remitted to the opposition division for further prosecution (main request);
 - the decision under appeal be set aside and the patent be maintained as granted;
 - the opponent's appeal be rejected and the patent be maintained on the basis of auxiliary request 1, as decided by the opposition division;

- the decision under appeal be set aside, the board find that the claims of any of auxiliary requests 2 to 8 meet the requirements of Article 123(2) EPC and the case be remitted to the opposition division;
- the decision under appeal be set aside and the patent be maintained on the basis of any of the auxiliary requests 2 to 8.

Auxiliary requests 1 to 8 were filed with the proprietor's statement of grounds of appeal and correspond to the respective requests as listed in the decision under appeal. The proprietor initially also requested oral proceedings if the board could not grant its main request. With a letter dated 10 February 2026 the proprietor withdrew its request for oral proceedings.

- V. The appellant/opponent ("opponent") requested that
- the decision under appeal be set aside and the patent be revoked in full (main request);
 - the board "decides on" or "assesses" the admissibility of the proprietor's appeal;
 - the appeal fee be reimbursed due to a substantive procedural violation committed by the opposition division;
 - the proprietor's auxiliary requests 2 to 8 not be admitted to the appeal proceedings;
 - the case be remitted to the opposition division for further prosecution if auxiliary requests 2 to 8 be admitted by the board.

The opponent initially requested oral proceedings in case its main request could not be granted. Later it withdrew this request, see letter dated

16 October 2025.

VI. Claim 1 of the patent as granted is worded as follows
(features' numbering as in the decision under appeal):

[1.0] *A light-emitting module (30) comprising:*

[1.1.1] *(a) a thermally conductive substrate (50)
 having one or more light-emitting elements
 thermally connected thereto,*

[1.1.2] *the substrate configured to operatively
 couple a source of power to the one or more
 light-emitting elements (315), thereby providing
 a means for activation of the one or more
 light-emitting elements;*

[1.2] *(b) a heat dissipation element (300) thermally
 coupled to the thermally conductive substrate;
 and*

[1.3.1] *(c) a housing element (40) including
 fastening means for detachably coupling the
 housing element to the heat dissipation element,*

[1.3.2] *said housing element including a transparent
 region enabling transmission of light emitted by
 the one or more light-emitting elements
 therethrough,*

characterized in that

[1.4] *the coupling between the housing element and
 the heat dissipation element is arranged to apply
 pressure to the substrate, which is inlaid
 between the housing element and the heat
 dissipation element, such that the substrate is
 pressed against the heat dissipation element
 thereby establishing a desired level of thermal
 contact between the heat dissipation element and
 the substrate.*

VII. The patent was maintained by the opposition division on the basis of auxiliary request 1, which was originally filed as auxiliary request 8 on 30 September 2022 (see page 2, paragraph 4 of the minutes of the oral proceedings before the opposition division). Claim 1 of this request has the same preamble as granted claim 1, while the characterising part has been amended as follows (feature numbering as in the opponent's statement of grounds of appeal, see pages 3 and 4; differences with respect to claim 1 as granted marked by the board):

...

characterized in that

[1.3.3] *the housing element is made of a material which has a degree of flexibility such that under a controlled applied mechanical force, the housing element assumes a strained shape and the fastening means assumes a position which enables the housing element to be slid over the heat dissipation element, and such that upon removal of the force the housing element assumes its unstrained shape, thereby causing the fastening means to clutch the heat dissipation element and secure a releasable connection between the housing element and the heat dissipation element,*

[1.4'] *wherein the coupling releasable connection*
between the housing element and the heat dissipation element is arranged to apply pressure to the substrate, which is inlaid between the housing element and the heat dissipation element, such that the substrate is pressed against the heat dissipation element thereby establishing a desired level of thermal contact between the heat dissipation element and the substrate.

VIII. The wording of the claims of auxiliary requests 2 to 8 is not relevant for this decision.

IX. The parties' arguments can be summarised as follows:

On the patent as granted

- The **proprietor** argued that claim 1 did not contain added subject-matter. The skilled person would have understood from the content of the application as originally filed that it was not necessary for the housing element to be made from a flexible material in order to achieve that pressure was applied to the substrate.
- The **opponent** argued that it was clear from the application as originally filed that it was the flexible housing element that applied the pressure to the substrate. There was no indication in the application documents that such a pressure was applied by any other type of housing element. Claim 1 contained therefore added subject-matter.

On the patent as maintained (auxiliary request 1)

- The **opponent** argued that claim 1 as maintained by the opposition division was not clear (Article 84 EPC) and the invention it defined was not sufficiently disclosed (Article 83 EPC). Moreover, the claim contained added subject-matter and its scope had been extended (Articles 123(2) and (3) EPC). Finally, the subject-matter of claim 1 as maintained did not involve an inventive step when either of documents D5 or D6 was taken as a starting point (Articles 52(1) and 56 EPC). As to the objection of insufficient disclosure, this

objection had been raised during the opposition procedure and the opposition division had committed a substantial procedural violation because it had not addressed it in the decision under appeal.

- According to the **proprietor**, claim 1 as maintained by the opposition division fulfilled the requirements of the EPC. The objection of insufficient disclosure had not been raised against this request during the opposition procedure and it constituted an amendment to the opponent's case, which should not be admitted into the appeal proceedings. The opposition division had not committed any violation because it did not need to comment on this objection in the decision under appeal.

Reasons for the Decision

Decision in written proceedings

1. Both parties withdrew their requests for oral proceedings. Neither of the parties replied in substance to the board's preliminary opinion as issued in the communication under Article 15(1) RPBA.
2. After reviewing the case the board concluded that there was no reason to deviate from its preliminary opinion and that it was in a position to take a decision. The parties were considered to rely on their written submissions. Consequently, the board cancelled the oral proceedings and issued its decision in written proceedings.

Admissibility of the proprietor's appeal

3. The opponent pointed to the proprietor's notice of appeal (filed on 27 March 2023) and noted that the proprietor was not properly identified as appellant therein. Therefore, the opponent claimed that the notice of appeal did not meet the requirements of Rule 99 EPC (see opponent's statement of grounds of appeal, page 2, point B)).
4. The board agrees with the opponent that the appellant's identity was not entirely clear from the notice of appeal (the information "Applicant: Signify Holding B.V." in the header of the notice of appeal might be seen as insufficient for that purpose) and the appellant's address was missing. However, not meeting the requirements of Rule 99(1)(a) EPC (i.e. not properly identifying the appellant) does not automatically lead to the appeal being rejected as inadmissible according to Rule 101(2) EPC.
5. Indeed, the proprietor was notified of the non-compliance with Rule 99(1)(a) EPC (see EPO Form 3045 sent on 1 June 2023 by the Registry) and it remedied the deficiency within the time limit provided (see proprietor's letter dated 6 June 2023). The board therefore considers the proprietor's appeal to be admissible.

Patent as granted, added subject-matter (Article 100(c) EPC)

6. The contested point relates to feature [1.4] of claim 1 as granted (see point VI. above).
7. For ease of understanding, the wording of paragraphs [0050] and [0051] of the application as published, the

content of which is taken to correspond to the application as originally filed, is repeated below.

[0050] *In one embodiment, the housing may be made of a material which has a degree of flexibility such that under a controlled applied mechanical force, the housing assumes a strained shape and its fastening means 450 can assume a position which enables the housing to be slid over the heat dissipation element 300. Upon removal of the force the housing element can assume its unstrained shape, thereby causing the fastening elements to clutch the heat dissipation element and secure a releasable connection between the housing element and the heat dissipation element. The housing element may be made by any process and of any material that ensures the foregoing functionality as would be readily understood by a worker skilled in the art.*

[0051] *In one embodiment, this connection between the housing element and the heat dissipation element can additionally apply pressure to the substrate, which is inlaid between the housing element and the heat dissipation element, such that the substrate is pressed against the heat dissipation element thereby establishing a desired level of thermal contact between the heat dissipation element and the substrate. Furthermore, this kind of attachment mechanism can be employed, for example, to press a sealing means such as glue or epoxy, for example, between the housing element and heat dissipation element, such that when assembled the cavity between the housing element and the heat dissipation element is sealed from environmental conditions. As would be readily understood, the sealing means may comprise various technologies such as prefabricated interchangeable seals in various shapes*

made of materials such as natural or synthetic rubber, gasket material or directly applied removable or irremovable sealant substances, or temporarily or permanently malleable sealant substances.

8. The opposition division held that feature [1.4] constituted an intermediate generalisation which had no basis in the originally filed application documents. The opposition division acknowledged that the application as filed disclosed that the coupling between the housing element and the heat dissipation element was arranged to apply pressure to the substrate, such that it was pressed against the heat dissipation element (see paragraph [0051]). However, according to paragraph [0050], the housing had to be made of a material which had a degree of flexibility, which gave it some specific properties and allowed it to be handled in a certain way when it was coupled to the heat dissipation element.
9. According to the opposition division, the term "this connection" in the first sentence of paragraph [0051] made clear that it was the (type of) housing element described in paragraph [0050], which applied pressure to the substrate when coupled to the heat dissipation element and not any (type of) housing element. In other words, the housing element in feature [1.4] had to be made of a material which had a degree of flexibility to be able to apply pressure to the substrate. Feature [1.4], however, included no such limitation, leaving open the possibility that any type of housing element would have been able to apply pressure to the substrate. This was going beyond the originally filed content of the application and so the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted (see impugned

decision, point 16.1 of the Reasons).

10. The proprietor pointed to paragraphs [0028] and [0029] of the description of the application and argued that it was not necessary for the housing element to be made of a material with a degree of flexibility in order to apply pressure to the substrate. According to paragraph [0028], the housing element "matingly connect[ed] with the heat dissipation element" (see last sentence). In the proprietor's view the skilled person would have understood that the housing element might connect *in a close fit* to the heat dissipation element. Paragraph [0029] described that the substrate was in "thermal contact with the heat dissipation element" (see first sentence). Therefore, a coupling between the housing element and the heat dissipation element with the substrate inlaid in between would have been able to apply pressure to the substrate. The skilled person would have understood that the thermal contact was realised by pressing the substrate to the heat dissipation element by means of the mating connection of the housing and heat dissipation elements (see proprietor's statement of grounds of appeal, point III.3 starting on page 2).
11. The board does not find this argument persuasive. As also noted by the opponent (see opponent's reply to the proprietor's appeal, page 4, under "Condition b)'), there is no mention of applying pressure to the substrate in paragraphs [0028] and [0029]. The description that the housing element "matingly connects" to the heat dissipation element does not necessarily imply that after the coupling has been achieved, there is pressure applied to the substrate, which lies between the two elements. In the board's understanding, the term "matingly connects" indicates a

form fitting connection between the housing element and the heat dissipation element (with the substrate between them) without any further indication or suggestion about the state of the coupled elements (and the substrate) after their connection. The board does not accept, either, that the indication that the substrate is in thermal contact with the heat dissipation element in paragraph [0029] implies that the substrate is in any way pressed onto the heat dissipation element. The skilled person understands that a (thermal) contact between the substrate and the heat dissipation element is sufficient to obtain the heat transfer from the substrate to the heat dissipation element. An additional pressure applied to the substrate might improve the heat transfer but is not necessary to achieve it.

12. Referring to paragraphs [0050] and [0051] the proprietor also argued that these paragraphs should be read in context with the preceding paragraphs [0041] to [0049], which described the housing element and its coupling to the heat dissipation element. The skilled reader would have understood that paragraphs [0050] and [0051] were not inextricably linked to each other.
13. Referring to original claim 11, the proprietor also argued that the releasable connection between the flexible housing element and the heat dissipation element should be considered in isolation and so the components of the embodiment described in paragraph [0050] could be isolated from those in paragraph [0051]. This would have led to the conclusion that the expression "this connection" in paragraph [0051] referred to the coupling between the housing element and the heat dissipation element which could have been any "releasable connection" as mentioned in paragraphs

[0014], [0050] and original claim 11. In that context the skilled person would have understood the term "additionally" in paragraph [0051] as "in addition to connecting". The coupling connected the housing element and the heat dissipation element and it also applied pressure to the substrate (see proprietor's statement of grounds of appeal, point III.4 and sub-points).

14. The proprietor also noted that paragraphs [0048] to [0050] described a series of features of the housing element. From those features only the substrate, which was inlaid between the housing element and the heat dissipation element, was repeated in paragraph [0051]. The skilled person would have understood that this was the only feature required for the embodiment described in paragraph [0051], i.e. in order for the housing element to apply pressure to the substrate. If any other feature had been necessary, it would have been repeated in that embodiment (*ibid.*, point III.5 and sub-points).
15. Finally, the proprietor argued that the skilled person reading paragraph [0050] would have understood that the force applied to the flexible housing element and the resulting deformation of it were relevant in securing the releasable connection between the housing element and the heat dissipation element. Once this connection was secured (achieved), no force was applied to the flexible housing any more, so that it was not deformed when in the "assembled state". The feature of applying pressure to the substrate as described in paragraph [0051] related to the "assembled state", and in that state the housing element was no longer deformed. Therefore, the skilled person would have concluded that the material of the housing element was not related to the application of pressure to the substrate and that

any housing element could have applied such pressure, irrespective of the material it was made of (*ibid.*, point III.6 and sub-points).

16. The board is not convinced by these arguments, either. The board rather agrees with the opponent in the following points:

- The expression "*... this connection ... can additionally apply pressure to the substrate ...*" in paragraph [0051] refers to the connection between the housing element and the heat dissipation element described in paragraph [0050]. As the opposition division also concluded (see impugned decision, points 16.1.2 and 16.1.4 of the Reasons), the term "this connection" can only be understood to refer to the lastly described connection, i.e. the one in paragraph [0050]. Consequently, the skilled person would not have come to the conclusion that the feature of applying pressure to the substrate was only an additional feature of the releasable connection, unrelated to the flexible housing defined in paragraph [0050].
- The fact that only one of the features of paragraph [0050] is repeated in paragraph [0051] would not have led the skilled person to conclude that none of the other features of paragraph [0050] was required in order to achieve that pressure is applied to the substrate. On the contrary, given the fact that other parts of the application describe this coupling/connection without any mention of any pressure being applied to the substrate (see also point 11. above), the skilled person would rather understand that only defining that a substrate is inlaid between the housing

element and the heat dissipation element is not sufficient to conclude that pressure is applied to the substrate.

- The only mention in the application as filed of pressure being applied to the substrate is in paragraph [0051]. As stated previously, the board considers that the skilled person reading the application as a whole and paragraphs [0050] and [0051] in particular, would draw the conclusion that applying pressure to the substrate is a feature of the releasable connection described in these two paragraphs, i.e. a connection between a flexible housing element and a heat dissipation element with the substrate inlaid between them.

17. Accordingly, the board agrees with the opposition division that claim 1 contains subject-matter extending beyond the content of the application as originally filed and the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted.

Patent as maintained by the opposition division (auxiliary request 1)

18. In the decision under appeal, the opposition division concluded that claim 1 of this request did not extend beyond the originally filed content of the application (see point 17.2 of the Reasons), was clear (see point 18 of the Reasons with sub-points), and involved an inventive step when documents D6 or D5 were taken as starting points (see points 19 to 23 and 24.2 to 24.5 of the Reasons, respectively).

Clarity (Article 84 EPC)

19. The opponent reiterated its objections from the opposition procedure that the expressions "material which has a degree of flexibility such that ..." and "under a controlled applied mechanical force" (feature [1.3.3]) were not clear. The latter contained an unclear relative term ("controlled") and the former was formulated as a result to be achieved and as relative expression. In both cases, the skilled person could not tell whether or not they were operating within the claimed scope.
20. The board notes that these objections were already dealt with in the decision under appeal (see point 18 of the Reasons with sub-points), but the opponent has not provided any arguments as to why the opposition division was wrong in its conclusions. The board agrees with the conclusions of the opposition division.
21. The opponent argued that the term "controlled" was a relative term which did not allow for a clear delimitation of the applied mechanical force. The board, however, agrees with the opposition division that the term "controlled applied mechanical force" implies that the applied force is controlled in some way and is not arbitrary. This feature should not be read in isolation, but within the context of claim 1 and in particular feature [1.3.3]. The applied mechanical force results in the flexible housing element being deformed. In the board's view, the skilled person is in a position to define, for a given housing element, what force has to be applied in order to deform it.

22. The same applies to the expression "degree of flexibility such that ... ", which should not be taken on its own, but has to be read in the context of the claim. The claim clearly defines what the further implications and constraints of the material's "degree of flexibility" are, namely that under a controlled applied mechanical force it assumes a strained shape and the fastening means assumes a position which enables the housing element to be slid over the heat dissipation element. Further, it is defined that removal of the force causes the housing element to assume its unstrained shape and the fastening means to clutch the heat dissipation element and secure a releasable connection. Therefore, the claim does not merely state that the material has a "degree of flexibility" but indeed specifies in concrete terms the technical function that the material has to fulfil.
23. The opponent also objected to the replacement of the expression "coupling" with the expression "releasable connection" in feature [1.4']. The opponent noted that in feature [1.3.1] the term "detachably coupling" (the housing element to heat dissipating element) was used. The skilled person reading claim 1 would have wondered whether these expressions were synonymous. If they were, then claim 1 was not concise. Since claim 1 did not indicate that they were indeed synonymous, the skilled person would rather have understood that there were two different functions of the fastening means, i.e. "detachably coupling the housing element to the heat dissipation element" and implementing a "releasable connection" between the housing element and the heat dissipation element. In that case, claim 1 was not clear (see opponent's statement of grounds of appeal, page 5, point I.3)).

24. The board does not find these arguments convincing. It rather agrees with the proprietor that the skilled person would understand that the term "releasable connection" in features [1.3.3] and [1.4'] of claim 1 is a more detailed specification of the term "detachably coupling" in feature [1.3.1] (see proprietor's reply to the opponent's appeal, point III.3).

25. Accordingly, the board's agrees with the opposition division that claim 1 of auxiliary request 1 fulfils the requirement of clarity according to Article 84 EPC.

Added subject-matter (Article 123(2) EPC)

26. The opponent objected to the use of the term "fastening means" in feature [1.3.3] (the second instance: *"thereby causing the fastening means to clutch the heat dissipation element and ..."*). In paragraph [0050] of the application as published the term "fastening elements" was used in a similar expression. Taking into account that "fastening means" was singular while "fastening elements" was plural, the opponent argued that the result of "clutch[ing] the heat dissipation element and secure a releasable connection between the housing element and heat dissipation element" was obtained by only one fastening means in feature [1.3.3], but it required a plurality of fastening elements in paragraph [0050]. This difference led to the conclusion that subject-matter had been added (see opponent's statement of grounds of appeal, page 5, point II.1)a)).

27. The board does not follow this argument and agrees with the proprietor that the term "fastening means" should be understood as a generic term referring to different

means used to fasten the heat dissipation element and the housing element together. As paragraph [0032] of the application describes, the fastening means can be implemented in several ways, like screws, bolts, adhesives or in any other way (see last sentence). Therefore, although the term is used in singular, "means" is to be understood as a generic term encompassing different implementations. It is noted that in paragraph [0050] both terms are used, once in a more generic context ("*... and its fastening means 450 can assume a position which enables the housing ...*"; see first sentence) and another in a more specific one ("*... causing the fastening elements to clutch the heat dissipation element and secure a releasable connection ...*"; see the second sentence).

28. In the board's view, the skilled person would understand that the "fastening elements" in the second sentence of paragraph [0050] refer to the "fastening means" of the preceding sentence. In other words, given the fact that the term "elements" is also generic (compared to the specific examples of paragraph [0032]), the skilled person would derive directly and unambiguously that the "fastening elements" and the "fastening means" refer to the same entity/feature.
29. The opponent also argued that since feature [1.3.3] stemmed from paragraph [0050], which related to the preferred embodiment described in paragraph [0049] and in the figures, several other features of that embodiment should have been included in the claim. Features such as the specific geometry and position of the fastening means or a certain surface of the housing element, for example, were essential features of that embodiment and their omission from claim 1 constituted an unallowable intermediate generalisation (see

opponent's statement of grounds of appeal, page 6, point II.1)b)).

30. The board does not follow the opponent in this argument, either. It rather agrees with the opposition division and the proprietor that none of these features plays a role in the invention defined in claim 1. Therefore, these features cannot be considered to be inextricably linked to the features of claim 1 and their omission from claim 1 does not result in added subject-matter (see also the impugned decision, point 17.2 of the Reasons).
31. The opponent also objected to the replacement of the expression *"said substrate being enclosed between the heat dissipation element and said housing element"* in original claim 1 with the expression *"the substrate, which is inlaid between the housing element and the heat dissipation element"* (feature [1.4']) in claim 1 as maintained. According to the opponent, the terms "enclosed" and "inlaid" did not have the same meaning. The opponent then used the so-called "essentiality test" or "three-point test" to assess whether or not the deletion of the feature "enclosed" from claim 1 constituted added subject-matter (see opponent's statement of grounds of appeal, page 6, point II.2) and sub-points).
32. The board does not agree with this argument of the opponent, either. As also the opposition division stated, the cited expression (including the term "inlaid") of claim 1 as maintained is to be found in the originally filed application (see paragraph [0051]).

33. The board does not consider the comparison of claim 1 as maintained to original claim 1 and the use of the "essentiality test" relevant in the present context. As can be readily determined, the difference between these two claims is not limited to the deletion of the term "enclosed" and its replacement with the term "inlaid", but there are several other features added in claim 1 as maintained with respect to original claim 1. The board, therefore, does not consider any conclusion drawn with the use of the "essentiality test" to be decisive in the assessment whether subject-matter has been added or not. As an aside, the board agrees with the more recent jurisprudence of the boards of appeal that the essentiality test is no longer considered appropriate when assessing the allowability of amendments. Rather, it is the requirements of the "gold standard" which ultimately must be met when assessing compliance with Article 123(2) EPC (see *Case Law of the Boards of Appeal of the European Patent Office*, 11th edition 2025, section II.E.1.4.4 c)).

34. The board therefore agrees with the opposition division that claim 1 as maintained does not contain added subject-matter and meets the requirements of Article 123(2) EPC.

Extension of the scope of protection, Article 123(3) EPC

35. The opponent argued that the replacement of the specific term "coupling" with the allegedly more generic term "releasable connection" in feature [1.4'] of claim 1 extended the defined scope of protection, contrary to the requirements of Article 123(3) EPC (see opponent's statement of grounds of appeal, page 9,

point III.).

36. As stated previously, according to the board's conclusion on clarity, the term "releasable connection" is more specific than the term "coupling" (see paragraph 24. above). Therefore, the scope of protection has been limited rather than extended and the requirements of Article 123(3) EPC are met.

Sufficiency of disclosure, Article 83 EPC

37. The opponent raised several objections regarding lack of sufficient disclosure of various features in claim 1 (see opponent's statement of grounds of appeal, page 9, point IV. and sub-points). It also pointed to the fact that the impugned decision did not contain any reasoning or discussion of the ground for opposition under Article 100(b) EPC, which had been raised in the notice of opposition. This resulted in an insufficient reasoning in the decision (Rule 111(2) EPC) and in a violation of its right to be heard (Article 113(1) EPC). The opposition division therefore had committed a fundamental (substantial) procedural violation. The opponent requested the appeal fee to be reimbursed under Rule 103(1)(a) EPC for this reason (*ibid.*, page 10, point IV.2)).
38. The proprietor argued that, in the opposition procedure, the opponent had not raised an objection regarding insufficient disclosure against the auxiliary request which was found to meet the requirements of the EPC. The opposition division, therefore, was not obliged to comment on this ground for opposition in the context of this auxiliary request and no substantive procedural violation had been committed. Moreover, since this objection had been raised in appeal for the

first time, it constituted an amendment of the opponent's case under Article 12(4) RPBA and should not be admitted by the board.

39. The board notes that the patent was maintained on the basis of auxiliary request 1, which was originally filed as auxiliary request 8 with the proprietor's letter dated 30 September 2022, submitted in preparation to the oral proceedings before the opposition division. The opponent responded with a letter dated 28 October 2022. In that letter the opponent raised objections against the main request and each of the then auxiliary requests 1 to 8. The board notes, as also the proprietor pointed out, that although a specific objection under Article 83 EPC was raised against each of the main request and auxiliary requests 1 to 7, no such objection was raised against auxiliary request 8 (see point 12 and sub-points starting on page 22 of that letter). The board concludes that the opponent deliberately chose not to raise this objection against what was at that stage auxiliary request 8.
40. During the oral proceedings before the opposition division, the proprietor promoted auxiliary request 8 to auxiliary request 1. All the objections raised against that request were discussed during the oral proceedings. There is no mention of the opponent mentioning or raising an objection of lack of sufficient disclosure against auxiliary request 1 during the oral proceedings (see also the corresponding parts of the minutes).
41. The board concludes therefore that no objection of lack of sufficient disclosure was raised by the opponent against this auxiliary request during the opposition

procedure. Since the main request was found to contain added subject-matter (Article 100(c) EPC), the opposition division did not need to discuss or decide on sufficiency of disclosure in the impugned decision. Accordingly, there is no substantial procedural violation committed by the opposition division and the opponent's request for reimbursement of the appeal fee is without merit.

42. It also follows that this objection was raised for the first time in the opponent's statement of grounds of appeal and constitutes an amendment to its case within the meaning of Article 12(4) RPBA, which is to be admitted into the proceedings at the board's discretion.

43. From the course of events during the opposition procedure it appears that the opponent had ample opportunity to raise such an objection during the opposition procedure but chose not to. The board does not see any reason why this objection was raised in appeal for the first time. Therefore, the board takes the view that this objection could and should have been raised in the opposition proceedings and is not admitted into the proceedings under Articles 12(4) and (6) RPBA.

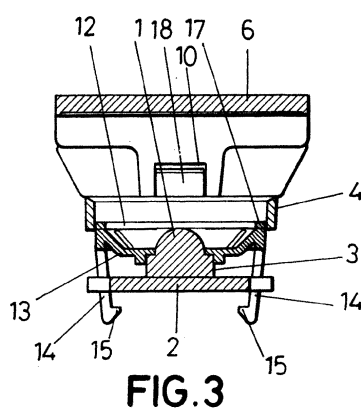
Inventive step, Articles 52(1) and 56 EPC

44. The opponent argued that claim 1 as maintained by the opposition division lacked inventive step when either document D6 or document D5 were taken as starting points.

Starting from D6

45. In the decision under appeal, the opposition division held that D6 did not disclose a heat dissipating element (defined in feature [1.2] and also mentioned in features [1.3.1], [1.3.3] and [1.4']). D6 did not disclose the rest of feature [1.3.3], either. The problem solved by the combination of these distinguishing features was to provide an improved thermal management and to avoid overheating of the LED. Although adding a heat dissipation function to element 11 of D6 was considered obvious to the skilled person, there was no hint in D6 or in any other known document to provide a housing element made of a flexible material with the functional features defined in feature [1.3.3]. The opposition division did not accept the opponent's argument that the fastening means 14, which appeared to have a degree of flexibility, could be considered a part of the housing element part 4 (see impugned decision, point 21 of the Reasons).

46. Reference is made to Figure 3 of D6 reproduced below:



47. The opponent's objection was based on the same premise as during the opposition procedure, i.e. that D6 disclosed a housing element according to feature [1.3.3] because the pins 14 (fastening means) were flexible and were part of the housing element part 4

(see opponent's statement of grounds of appeal, starting on page 13, point V.1)). Following from that premise, the only feature distinguishing claim 1 from D6 was the heat dissipating element. Adding a heat dissipating element to D6 would have been obvious to the skilled person.

48. The board does not agree with the opponent that D6 discloses feature [1.3.3]. Claim 1 makes a distinction between the housing element and the fastening means. Even if the fastening elements are considered to be part of the housing element (according to feature [1.3.1] the housing element *includes* the fastening means), feature [1.3.3] defines clearly that the housing is made of a flexible material and assumes a strained shape when mechanical force is applied. In contrast, the fastening means *assumes a position which enables the housing elements to be slid over the heat dissipation element*. There is no indication that the fastening means are in any way deformed at that stage. It is rather the housing that assumes its unstrained shape when the force is removed. In the board's opinion, the flexible fastening means (pins 14) of D6 cannot be seen to correspond to the flexible housing of feature [1.3.3].
49. Since the board agrees with the opposition division that D6 does not disclose feature [1.3.3], it cannot follow the opponent's argument which is based on the assumption that feature [1.3.3] is disclosed in the closest prior art (i.e. D6). Consequently, the board's view is that claim 1 is not obvious to the skilled person when D6 is taken as a starting point.

Starting from D5

50. D5 describes a luminaire having a light source (2) that is contained within a housing (1). To protect the light source, the housing (1) is covered by a light transmitting plate (10) which is fixed to the housing using a double-faced adhesive tape (12). See Figure 1 of D5, reproduced below:

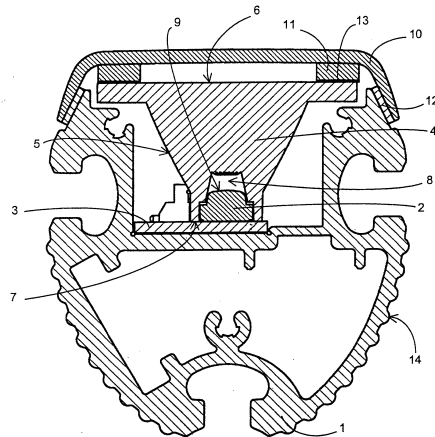


FIG. 1

51. It is common ground that D5 does not disclose feature [1.3.3], which is the sole distinguishing feature. The opposition division concluded that it would not have been obvious to the skilled person to exchange the adhesive tape (12) of D5 with elastic fastening means as disclosed in document D7 (see e.g. Figure 3). The opposition division held that the skilled person starting from D5 would not have considered the system of D7 and even if they did, there were no hints as to how to implement the fastening means of D7 in the device of D5, as the construction of D7 was very different from that of D5 (see impugned decision, points 24.2 to 24.5 of the Reasons).
52. According to the opponent, the skilled person starting from D5 was faced with the problem of providing an alternative attachment which avoided screws. D7 mentioned a *clamping system which, in particular, makes bonding processes superfluous* (see column 1, lines 23

to 35). This would have incited the skilled person to take the teaching D7 into consideration and to replace the adhesive tape of D5 with the snap-fitting coupling mechanism of D7. Claim 1 would therefore have been obvious to the skilled person (see opponent's statement of grounds of appeal, page 18, point V.2)).

53. The board does not find this argument persuasive. The board rather agrees with the opposition division and the proprietor that, even if the skilled person were to consider D7, it would still not be obvious to them which elements of the "snap-fit" mechanism of D7 (see Figure 3) would need to be implemented in the luminaire of D5 and how this would be achieved. Moreover, the board also agrees with the proprietor that the releasable connection defined in feature [1.3.3] comprises several functional features regarding the housing element and the fastening means which are not unambiguously disclosed in either D5 or D7 or in a possible combination of their teachings.
54. The board's conclusion is therefore that the subject-matter of claim 1 as maintained by the opposition division involves an inventive step within the meaning of Article 56 EPC. Since claim 1 is considered inventive, dependent claims 2 to 6 are also inventive. Consequently, the opponent's objections of lack of novelty (of the additional features) against claims 2 to 6 (see opponent's statement of grounds of appeal, page 19) cannot be followed.
55. In conclusion, the board agrees with the opposition division that the patent as amended according to auxiliary request 1 meets the requirements of the EPC.

56. Since neither of the parties succeeded in convincing the board to set aside the decision under appeal, both appeals must fail.

Order

For these reasons it is decided that:

1. The appeals are dismissed.
2. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chair:



B. Atienza Vivancos

T. Häusser

Decision electronically authenticated