

**Internal distribution code:**

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

**Datasheet for the decision  
of 25 September 2025**

**Case Number:** T 1754/23 - 3.3.06

**Application Number:** 17784603.7

**Publication Number:** 3526314

**IPC:** C10L1/06, C10L1/02

**Language of the proceedings:** EN

**Title of invention:**

ALKYLATE GASOLINE COMPOSITION WITH RENEWABLE NAPHTHA AND ISO-OCTANE

**Patent Proprietor:**

Neste Oyj

**Opponents:**

Lantmännen Aspen AB  
Maiwald GmbH

**Headword:**

ALKYLATE GASOLINE COMPOSITION/Neste Oyj

**Relevant legal provisions:**

EPC Art. 83, 123(2), 56

**Keyword:**

Sufficiency of disclosure - (yes)  
Amendments - allowable (yes)  
Inventive step - non-obvious alternative

**Decisions cited:**

T 1919/11, T 1320/13

**Catchword:**



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

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

Case Number: T 1754/23 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 25 September 2025**

**Appellant:** Lantmännen Aspen AB  
(Opponent 1) Iberovägen 2  
438 54 Hindas (SE)

**Representative:** AWA Sweden AB  
Box 45086  
104 30 Stockholm (SE)

**Appellant:** Maiwald GmbH  
(Opponent 2 ) Elisenhof/ Elisenstr. 3  
80335 München (DE)

**Representative:** Maiwald GmbH  
Engineering  
Elisenhof  
Elisenstrasse 3  
80335 München (DE)

**Respondent:** Neste Oyj  
(Patent Proprietor ) Keilaranta 21  
02150 Espoo (FI)

**Representative:** Zacco Denmark A/S  
Arne Jacobsens Allé 15  
2300 Copenhagen S (DK)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
4 August 2023 concerning maintenance of the  
European Patent No. 3526314 in amended form.**

**Composition of the Board:**

**Chairman**            J.-M. Schwaller  
**Members:**            R. Elsässer  
                             L. Basterreix

## Summary of Facts and Submissions

I. The appeals of the proprietor and of both opponents were directed against the decision of the opposition division to maintain the patent in amended form, based on auxiliary request 4.

II. With their grounds of appeal, opponents 1 and 2 both raised objections under Article 123(2), 83 and 56 EPC.

Opponent 1 argued *inter alia* that the subject-matter of claim 1 as upheld by the opposition division lacked an inventive step when starting from **D17** (US 2006/0101712 A1) and taking into account the teaching of **D2** (EP 2 368 968 A1), **D7** (US 2011/0319683 A1), common general knowledge or **D6** (DE 197 44 109 A1).

For Opponent 2, the subject-matter of claim 1 did not involve an inventive step when starting from **D17**, **D14** ("*Volatile hydrocarbons in exhaust from alkylate-based petrol*"; U. Östermark and G. Petersson) or **D6**, and taking into account the teaching of **D2** or **D7**.

III. With its grounds of appeal, the proprietor contested the decision and filed a main request and six auxiliary requests, with auxiliary request 6 corresponding to the set of claims held allowable by the opposition division.

IV. In their replies, opponent 2 requested that the proprietor's appeal be dismissed; the proprietor filed auxiliary requests 7-20 and requested that the opponents' appeals be dismissed. Opponent 1 did not reply to the proprietor's appeal.

- V. At the oral proceedings held on 25 September 2025, the proprietor withdrew its appeal and the opponents' appeals were dismissed.

## Reasons for the Decision

Auxiliary request 6

1. This request, which corresponds to the set of claims held allowable by the opposition division, is the highest ranking request on file; for the reasons given below, the board has concluded that its claims meet the requirements of the EPC.
2. Claim 1, with highlighted amendments compared to claim 1 as filed, reads as follows:

*"1. Process for preparing a gasoline composition, which comprises*

*(a) admixing with a fossil alkylate base gasoline comprising:*

*90 vol-% or more C<sub>5</sub>-C<sub>12</sub> paraffins,*

*5 vol-% or less of naphthenes,*

*1 vol-% or less of aromatics,*

*1 vol-% or less of oxygenates,*

*RON of at least 87,*

*the alkylate base fuel in an amount in the range from 40 to ~~9~~80 vol% based on the total gasoline composition;*

*(b) a renewable naphtha distillate **having a RON from 35 to 70 comprising:***

*90 vol-% or more C<sub>5</sub>-C<sub>12</sub> paraffins,*

*30 vol-% or more C<sub>5</sub>-C<sub>6</sub> paraffins,*

*5 vol-% or less of naphthenes,*

*1 vol-% or less of aromatics,*

*1 vol-% or less of oxygenates,*

*the renewable naphtha distillate in an amount of ~~4~~3 vol-% or more based on the total gasoline composition; and*

*(c) one or more C<sub>5</sub>-C<sub>12</sub> iso-paraffins having a RON of at least 95, the one or more iso-paraffins in an amount in the range from 10 to 30 vol% based on the total gasoline composition,*

**wherein the renewable naphtha distillate is in an amount of 3 vol-% or more based on the total gasoline composition, and wherein the renewable content is determined by isotopic distribution involving 14C, 13C and/or 12C as described in ASTM D6866.**

3. Amendments - Article 123(2) EPC

For the reasons set out below, the above claimed subject-matter is directly and unambiguously derivable from, and so does not extend beyond, the original disclosure.

3.1 The lower limit of 3 vol-% of renewable naphtha is disclosed in claim 2 as filed which refers back to claim 1 as filed.

3.2 The method for determining the renewable content recited in the claim is disclosed on page 12, line 5-6. Since this is the only suitable method disclosed in the application as filed, no additional pointer is necessary to combine this disclosure with the subject-matter of claims 1 and 2.

3.3 The RON of the renewable naphtha is disclosed throughout the description as filed as being relatively low, with the broadest range being 35-70 (first paragraph of page 5), as presently defined in claim 1

at issue.

3.4 Finally, the lowering from 90 to 80 of the upper limit for the amount of alkylate fuel is directly and unambiguously derivable from page 10, line 22 as filed.

3.4.1 Opponent 1 argued that, according to decisions **T 1919/11** and **T 1320/13**, this amendment did not comply with the requirements of Article 123(2) EPC.

3.4.2 The board disagrees since in **T 1320/13**, the board found that, if the application as filed discloses both a range (here a ratio in the range of 0.1-1) and an individual value (here the specific ratio of 0.6), it is not permissible under Article 123(2) EPC to create a new range having the individual value as one of its end points (here the ratio in the range of 0.6-1) since, unlike values disclosed as end points of a range, individual values only relate to themselves and not to any values in between (see points 12 and 13 of the reasons).

This is different from the case at hand, where the value of 80 vol-% is explicitly disclosed as the upper value of a range ("80 vol-% or less"), and so **T 1320/13** is not relevant.

3.4.3 In the case underlying **T 1919/11**, the application as filed disclosed a broad range of "less than 900  $\mu\text{M}$ " for a particular concentration. In addition, it disclosed various upper and lower limits of varying degree of preference, among them the upper value of 200  $\mu\text{M}$  and the lower value of 1  $\mu\text{M}$ . In this situation, the board considered that the claimed range of 1  $\mu\text{M}$  to 200  $\mu\text{M}$  extended beyond the original disclosure since both its upper and lower limit had been arbitrarily combined

(point 2.2.2 of the reasons).

This is again different from the situation in the case at hand where the lower limit of 40 vol-% is already disclosed in claim 1 as filed in combination with most of the other features of the claim so that, unlike in the case underlying **T 1919/11**, only the upper limit of the range is amended.

4. Sufficiency of disclosure - Article 83 EPC

The board has come to the conclusion that the invention is sufficiently disclosed for the following reasons.

- 4.1 Claim 1 is directed to a process for preparing a gasoline composition, which only requires to mix the three compositions (a), (b) and (c), each of which comprises well-known and readily available compounds.

The description teaches that in said composition, various properties, such as the vapour pressure and the RON, need to be appropriately balanced, but as consistently argued by the opponents, this is common practice in this technical field.

Therefore it is not apparent why the skilled person should not be able to prepare such a mix.

- 4.2 Opponent 2 argued that a composition that contains high amounts of renewable naphtha, such as 50 vol% would not be usable as gasoline since the resulting RON would be too low.

This argument is not convincing as no evidence for this allegation has been filed. Moreover, it appears theoretically possible to compensate a high proportion

of low RON naphtha by using high RON components in compositions (a) or (c).

The board also notes that a composition comprising 50 vol-% of component (b) might be conceptionally covered by the claim but it is not as such explicitly claimed. To the contrary, such a composition is only arrived at when the lower limits of components (a) and (c) are combined, which is an embodiment neither disclosed nor taught anywhere in the application as filed.

- 4.3 Opponent 2 further argued that the claim allowed for the gasoline composition to comprise up to 47 vol% of undefined components and the patent did not teach which other compounds could be used to add up to 100 vol%.

The board observes that also this argument is based on an embodiment where the lower limits of components (a), (b) and (c) are combined, which is also neither explicitly claimed nor discussed, let alone suggested in the description.

Moreover, even if this embodiment were considered, it is not apparent why the skilled person would need any explicit guidance in this regard since compounds that are usable as gasoline components are undeniably part of common general knowledge.

- 4.4 The objections raised by opponent 1 are not convincing either because, while it is correct that the definitions of components (a) and (c) are overlapping in that the alkylate base gasoline might also contain C<sub>6</sub>-C<sub>12</sub> iso-paraffins having a RON of at least 95, it is not apparent why this finding would prevent the skilled person from carrying out the invention.

Opponent 1 pointed out that, in view of the overlapping definitions of components (a) and (c), a given component might be understood as a "pre-mix" of (a) and (c). Moreover, the skilled person would not know whether in such a case, component (c) would or not have to be added in order to carry out the invention.

This objection is however not relevant since it pertains to the clarity of the claim, not to sufficiency of disclosure. As matter of fact, claim 1 is a method that requires to mix the three components (a), (b) and (c), but there is no reason to assume that the skilled person cannot carry out these steps. Even if opponent 1 was correct that the skilled person would not know whether, in a case where a component can conceptionally be understood as a "pre-mix" of two (virtual) components (a) and (c), component (c) must still be added or not, this would not mean that the invention could not be carried out but merely that there is a process for which it is not clear whether it is covered or not by claim 1.

- 4.5 Opponent 1 raised a similar objection with regard of the examples and pointed out that it was not clear why iso-pentane was added in some of the examples and/or whether or not it was to be considered as part of components (a) or (b). However, for similar reasons as set out above, it is not apparent why this finding would prevent the skilled person from carrying out the claimed invention.

Opponent 1 further pointed out that it was not disclosed in the patent that examples 1 to 4, on the one hand, and examples 6 to 9, on the other hand, used different base fuels, as explained by the proprietor in its letter of July 2022. However, the board notes that

for an invention to be sufficiently disclosed, it suffices that the skilled person can put into practice the claimed subject-matter. It is not a requirement under Article 83 EPC that the examples be repeatable.

5. Article 56 EPC

The invention concerns a method of preparing a gasoline composition being partly based on renewable sources.

5.1 All parties agreed that **D17** could be selected as starting point for the assessment of inventive step, as this document discloses gasolines and methods of making them by mixing various hydrocarbon streams. D17 does not disclose the use of any renewable component but mentions the production of "green" fuels, without however referring to renewable fuels but to fuels with reduced levels of pollutants and toxins.

5.1.1 With regard to the distinguishing features, the opponents initially argued that claim 1 differed from the disclosure of **D17** only in the addition of step (b) but in opponent's 2 submission of 12 April 2024 (page 14), three differences were identified.

5.1.2 For the board, the argument that the presence of renewable naphtha in the gasoline was the only distinguishing feature over **D17** is not convincing, since the opponents failed to identify where exactly the remaining claimed features are disclosed in **D17**.

Rather, in the board's view, claim 1 is distinguished over **D17** by the following features:

Indisputably, **D17** does not disclose any renewable material (component (b)) but also a hydrocarbon stream

which fulfils the requirements set out for component (a) is not derivable from D17. Opponent 2 referred in this respect to the first stream (table 6) in D17, but its RON is not disclosed. Furthermore, paragraph 0009 of **D17** teaches that the first stream makes up from 5 to 85 vol-% of the fuel, so that a selection has to be made in order to arrive at the claimed amount of from 40-80 vol-%.

There is also no disclosure of component (c). Opponent 2 referred in this respect to the fourth stream (table 15) but also for this stream the RON is not disclosed. In this context, it can be noted that it is not disputed that some of the compounds listed in table 15 have a high RON (for instance 2,2,4-trimethylpentane) but this is not sufficient to conclude that the stream as a whole has a RON in the claimed range. Furthermore, the fourth stream makes up from 0 to 25 vol-% of the fuel so that also here selections have to be made in order to arrive at the claimed amount, namely first to include this optional stream at all and then to select an amount in the claimed range.

The other argument made by opponent 2, namely that the iso-hexane stream could alternatively be seen as representing component (c), fails for the same reasons since the iso-hexane stream is optional and, if used, this could well be added in smaller amounts than claimed. Moreover, it has not been shown that an iso-hexane stream has a RON in the claimed range.

- 5.1.3 Based on these differences, the problem to be solved can be formulated as the provision of a method of preparing a more sustainable gasoline. The alternative formulations of the problem discussed in the written procedure and at the oral proceeding, such as "the

provision of a fuel with a higher content of renewable materials" are to be rejected since they contain an element of the solution. However, this is not decisive for the outcome of the case.

- 5.1.4 As a solution to the problem, the patent proposes a method comprising the steps of mixing compositions (a), (b) and (c), in the amounts indicated in the claim.
- 5.1.5 The opponents argued that this solution was obvious, when taking into account the teaching of **D7** or **D2**, whereby these documents were taken to disclose renewable component (b), either when added to any fuel according to the teaching of **D17** or as a replacement for the third hydrocarbon stream disclosed therein.
- 5.1.6 However, these arguments are not convincing because, as set out above, the RON of the first hydrocarbon stream exemplified in table 6 is not known, and while the skilled person could certainly select a composition meeting the general requirements for this stream set out in paragraph [0009] and having a RON in the claimed range, such a stream would not necessarily fulfil the requirement of a content of C<sub>5</sub>-C<sub>12</sub>-paraffins of more than 90 vol-%, so that the skilled person would i) have to chose the option of including a fourth stream, ii) to add it in an amount of from 10-30% and iii) to select components having a RON of more than 95, in order to arrive at steps (a) and (c) of claim 1.

If alternatively, the entire fuel of **D17** were taken to represent component (a), there is no disclosure of the content of C<sub>5</sub>-C<sub>12</sub>-paraffins. Either way, the document does not explicitly disclose this component.

Furthermore, in order to arrive at the claimed subject-matter, the skilled person would then have to include renewable component (b), but although **D7** discloses renewable naphtha compositions which conceptionally encompasses the naphtha of component (b), this document does not explicitly disclose such a material. In particular, **D7** does not disclose a renewable naphtha having the claimed i) C<sub>5</sub>-C<sub>12</sub>-content, ii) naphthene content and iii) RON in combination. In case the compositions were to be altered to increase the content of C<sub>5</sub>-C<sub>12</sub>-paraffins, the RON might not be in the claimed range any more since, according to the general teaching of **D7**, the RON is typically less than 40 and it can thus be lower than claimed.

5.1.7 It follows that **D17** fails to disclose all the features of steps (a) and/or (c), and document **D7** fails to disclose all those of step (b), so that opponents' argument that the documents taken in combination render obvious the claimed subject-matter appears to be based on hindsight.

5.1.8 The attack using **D2** as secondary reference instead of **D7** is not convincing either, because it is not persuasive that the skilled person would have considered **D2** at all when starting from **D17**, because **D17** is directed to fuels for combustion engines while **D2**, as its title suggests, is primarily concerned with solvents. It is correct that the use as a fuel is also briefly mentioned in paragraphs 0012 and 0028 of **D2**, but the examples (which relate to heating and lighting) suggest that the fuel is simply burned, e.g. in a stove, rather than used in a combustion engine. At least, there is no explicit or implicit disclosure for such a use. Moreover, even if the skilled person would turn to **D2**, it would not arrive at the claimed subject

matter since D2 does not disclose nay RON of the compositions described.

The opponents argued that a RON in the claimed range was to be expected, but this is pure speculation. Moreover, given that **D2** does not disclose fuels to be used in combustion engines, it is not even plausible to assume that the RON of the compositions must lie in the claimed range, since for an application as a solvent or as a fuel to be burned, the RON is not a relevant factor.

It is furthermore noted that a complete exemplified composition is set out in table 2 of **D2**, so that it would have been possible to calculate, measure or at least estimate its RON, but no such evidence has been filed.

Therefore, the skilled person would not have arrived at the claimed invention, even if **D2** was considered.

- 5.1.9 In its grounds of appeal, opponent 1 also mentioned attacks combining **D17** with common general knowledge or **D6**. However, neither **D6** nor the common general knowledge relied on concerns the addition of a renewable component (b), so that these attacks apparently also rely on **D2** or **D7**.
- 5.1.10 Opponent 1 argued that the skilled person would realise that the addition of renewable naphtha lowers the RON, so that it had to be increased again by adding iso-octane. Since both measures lowered the vapour pressure of the gasoline, the skilled person would further add iso-heptane.

The board notes that this objection basically repeats

the description of the invention in paragraphs 0021 and 0083 of the patent. However, there is no evidence on file that these measures in combination belonged to the common general knowledge, and even if they did, it has not been shown that or how this general knowledge would lead to the specific subject-matter claimed.

- 5.1.11 Opponent 1 then argued that it was common general knowledge that iso-paraffins having a high RON can be added to a fuel in order to increase its RON. Therefore, the solution of "the other partial problem" was obvious. Opponent 1 did however not define the first partial problem so that it is assumed that the opponent considered the first partial problem to be to render the fuel more climate friendly, its solution being the addition of component (b). However in this case, the partial problem approach would not be appropriate since it should only be used for features that are not technically interrelated. If however the incorporation of component (b) must be compensated by component (c), then the features are interrelated and cannot be treated separately.

Similar arguments apply to the combination of **D17** with **D6** (and **D2** or **D7**).

5.2 **D14** as closest prior art

- 5.2.1 According to opponent 2, the fuel "Aspen 4T" disclosed in table 1 of **D14** could be seen as component (a) of claim 1. In particular, table 1 of **D14** disclosed that Aspen 4T (column "Fuel<sup>b</sup>") contained 80.1 wt-% of C<sub>5</sub>-C<sub>8</sub> paraffins. Combining this with the disclosure of footnote (b), a content of C<sub>5</sub>-C<sub>12</sub> paraffins of 90.13 % could be calculated.

5.2.2 For the board, the exact meaning of the footnote is however ambiguous, as Table 1 discloses a detailed composition and indicates individual values for C4-C8 paraffins and isoparaffins, but the C9-C12 paraffins are not mentioned. Footnote (b) then discloses the following: *"36 mg m<sup>-3</sup> (average) +/- 11 mg m<sup>-3</sup> (stand. dev.) of C2-C8 hydrocarbons; composition calculated for 10% (fuel, assessed) and 5% (exhaust, estimated) C9-C11 alkanes."* What exactly this means and how this information can be combined with the table is not disclosed in an unambiguous manner in **D14**, so that it is not possible to merely add 10 wt-% to the 80.1% of C5-C12 iso-paraffins listed in the table.

Moreover, even if the information in said Table and the footnote were to be combined, the values obtained are given in wt.%, not in vol.% as claimed. While the differences between wt.% and vol.% may be minor for paraffins they are not identical, so that in view of the calculated wt-% value (90.13 wt.-%) being very close to the claimed lower limit of 90 vol.-%, **D14** does not directly and unambiguously disclose component (a).

5.2.3 Moreover, opponent 2 argued that a part of the iso-octane contained in the Aspen 4T could be seen as component (c), so that **D14** disclosed component (a) and (c), but this is not convincing since in such case, the amount of C<sub>5</sub>-C<sub>12</sub>-paraffins of component (a) would be reduced accordingly, so that **D14** does not disclose a premix of components (a) and (b).

5.2.4 Based on the distinguishing features, the problem to be solved can again be formulated as the provision of a method of preparing a more sustainable gasoline.

- 5.2.5 As a solution to this problem, the patent proposes a method comprising the steps of mixing compositions (a), (b) and (c) in the amounts indicated in the claim.
- 5.2.6 The opponents argued that this solution was obvious when taking into account the teaching of **D7** or **D2**, which disclose renewable fuel compositions and common general knowledge, respectively.
- 5.2.7 For the board, the attack taking into account **D2** fails for the same reasons as set out above concerning the attack starting from **D17**.
- 5.2.8 Also for **D7** the observations set out above apply, in particular because the document does not explicitly disclose composition (b). Moreover, it is questionable whether the skilled person would have considered **D7** when starting from **D14** since the latter teaches away from using fuels containing hexane ("Hexane stands out among the alkanes as specifically neurotoxic"), while the renewable compositions disclosed in tables 6 and 7a of **D7** contain considerable amounts of this compound.
- 5.2.9 Furthermore, opponent 2 has acknowledged that, when discussing the necessity to offset the drop of RON upon the addition of renewable naphtha, **D7** proposes to use ethanol as high RON component instead of iso-paraffins having a high RON, as required by component (c).
- 5.2.10 The board notes that **D14** does not disclose all the features of step (a) and neither **D2** nor **D7** disclose all the features of step (b). Moreover, as set out in point 5.2.8, there are reasons for the skilled person not to apply the teaching of **D7** to **D14** and even if the skilled person considered **D7**, the document teaches an alternative to step (c), see point 5.2.9. It follows

that the opponents' argument that the documents render obvious the claimed subject-matter appears to be based on hindsight.

### 5.3 **D6** as closest prior art

#### 5.3.1 Admissibility

The proprietor's request not to admit this attack is rejected. **D6** was cited (as E6) in the grounds for opposition of opponent 2 but used lately as starting point for an inventive step attack - namely five days before the final date for making written submissions under Rule 116 EPC - and although the opposition division held this attack late, they admitted it into the procedure (point 3.3.8 of the decision). For the proprietor, the attack should not have been admitted because the course of action taken by opponent 2 amounted to an abuse of procedure. In particular, it was unacceptable to cite a document without discussing it in the grounds for opposition, thereby leaving the other party in the dark as to the purpose and aim of the filing of said document. Therefore, the opposition division had exercised its discretion in an unreasonable way.

These arguments have not convinced the board. First, it is not clear on which legal basis a document admitted by an opposition division in a discretionary decision could be rejected by the board since the RPBA only cover the possibility of admitting facts or documents that had not been admitted by the opposition division, for instance in case the division exercised its discretion in an unreasonable way. In contrast, the exclusion of documents or facts already admitted into the procedure is not foreseen.

Even if rejecting the attack based on **D6** was legally possible in cases where the division exercised its discretion in an unreasonable way, no such error is apparent in the case at hand. As set out in the decision, the division considered not only the *prima facie* relevance, but also the fact that D6 had already been part of the examination proceedings and was therefore known to the proprietor. These criteria are all reasonable so that there is no evidence of any misuse of discretion.

The proprietor took issue with the fact that **D6** was cited in the grounds of opposition but not discussed at all. However, it is common practice for opposition divisions to admit late filed documents and the corresponding attacks at this stage of the procedure or even later, depending on the circumstances. It is not apparent why an opponent who cites a document in the grounds for opposition and provides a reasoning based on that document later should be treated differently than one who files the document and the corresponding reasoning at a late stage of the proceedings.

The proprietor also pointed out that there was a contradiction between the finding of *prima facie* relevance and the fact that at the end, the division selected **D17** as closest prior art. This finding is however not indicative of an error of discretion. Rather, it is unavoidable that the outcome of the - by its very nature only cursory - examination of *prima facie* relevance and the examination of the actual relevance might occasionally differ.

- 5.3.2 While the attack based on **D6** is admissible, it is not convincing in substance for the following reasons:

According to opponent 2, **D6** discloses a fossil fuel which might be considered as alkylate base gasoline (a) or even as a mixture of components (a) and (c), since the fuel disclosed therein contained high amounts of 2,2,4-trimethylpentane, which is an iso-paraffin having a RON of at least 95.

The proprietor contested that the fuel of **D6** could be considered as an alkylate base gasoline in the sense of paragraph 0036 of the patent. Since the attack fails for other reasons, see below, this argument needs not be considered. Therefore, it can be assumed that the distinguishing feature is the addition of the renewable naphtha component (b).

According to opponent 2, the problem to be solved was the provision of a process for making gasoline having a higher content of renewables. As mentioned above, this formulation is problematic since it contains an element of the solution, so that a more appropriate formulation would be the provision of a process for preparing a more sustainable fuel. However, the outcome of the inventive step assessment is the same in both cases.

Opponent 2 argued that the claimed solution, namely the addition of at least 3 vol-% of renewable naphtha (b), was rendered obvious by either **D7** or **D2**.

However, the board has come to the conclusion that the skilled person would not consider blending the gasoline of **D6** with the renewable naphtha of **D7**, since **D6** teaches not to include paraffins having 9 or more C-atoms into the fuel. In fact, **D6** specifically aims at the provision of a fuel not having these components (page 3), so that the skilled person would not consider mixing the fuel of **D6** with a naphtha of **D7**, which

contains considerable amounts of longer chain paraffins.

Opponent 2's argument that the skilled person would accept the problems caused by the longer chain paraffins if they allowed to solve the above problem is not persuasive, because this would mean to act against the explicit teaching of a document, which is not an obvious measure for the notional skilled person.

Moreover, it is immediately evident that the problem of increasing the content of renewables in the gasoline of **D6** can easily be solved without acting against the core teaching of the document, namely by selecting a paraffin of renewable origin for one or more of the components of the gasoline composition (see e.g. examples 1 or 2).

The attack using **D2** as secondary reference is not convincing for the reasons indicated above, namely that the document does neither disclose nor render obvious a renewable naphtha having a RON in the claimed range.

6. It follows from the above considerations that none of the opponents' objections succeeds.

**Order**

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

The opponents' appeals are dismissed.

The Registrar:

The Chairman:



A. Wille

J.-M. Schwaller

Decision electronically authenticated