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**Datasheet for the decision  
of 4 December 2025**

**Case Number:** T 1830/23 - 3.4.03

**Application Number:** 16887956.7

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**IPC:** G01N35/10, G01N21/64, B01L3/00,  
G01N35/00

**Language of the proceedings:** EN

**Title of invention:**

DETECTION METHOD, DETECTION SYSTEM AND DETECTION DEVICE

**Applicant:**

Otsuka Pharmaceutical Co., Ltd.

**Relevant legal provisions:**

EPC Art. 108  
EPC R. 99(2)

**Keyword:**

Admissibility of appeal - appeal sufficiently substantiated  
(no)

**Decisions cited:**

T 0922/05



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Case Number: T 1830/23 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 4 December 2025**

**Appellant:** Otsuka Pharmaceutical Co., Ltd.  
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Chiyoda-ku  
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**Representative:** Henkel & Partner mbB  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 18 April 2023  
refusing European patent application  
No. 16887956.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Papastefanou  
**Members:** J. Thomas  
G. Decker

## **Summary of Facts and Submissions**

- I. The appeal is against the decision of the examining division refusing European patent application No. 16 887 956 on the grounds that the subject-matter defined in claims 1, 10 and 11 of the main request and the first auxiliary request did not involve an inventive step (Article 52(1) EPC in combination with Article 56 EPC) and that claims 1, 9 and 10 of the then second auxiliary request were unclear (Article 84 EPC).
- II. Along with the statement setting out the grounds of appeal, the appellant filed a main request and first and second auxiliary requests, which were identical to those that had served as the basis for the impugned decision.
- III. In response to the board's communication under Article 15(1) RPBA, the appellant filed an amended second auxiliary request by letter dated 13 October 2025, replacing the then second auxiliary request.
- IV. Oral proceedings took place before the board at the end of which the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request or the first auxiliary request, both of which served as the basis for the decision under appeal, or according to the second auxiliary request filed by letter dated 13 October 2025.
- V. The following documents are referred to below:

D1: US 2011/020178 A1

D10: US 2007/0116600 A1

D11: US 2012/005801 A1

VI. Claim 1 of the main request has the following wording:

*"A detection method comprising:*

*a sample harvesting step (S30) of harvesting a sample from a sample holding well (131) that holds a sample and moving the sample to a detection chip (10) that captures a detection target substance contained in the sample, via a liquid harvesting section (137);*

*a detection step (S60) of detecting the detection target substance captured by the detection chip (10), via a detection section; and*

*a remaining sample collection step (S80) of after the sample harvesting step (S30), harvesting a remaining sample from the sample holding well (131) and moving the remaining sample to a sample collection well (135) via the liquid harvesting section (137),*

*wherein after the remaining sample collection step (S80), an opening area of an opening part (B) provided in the sample collection well (135) is smaller than an opening area of an opening part included in the sample holding well (131),*

*wherein the sample collection well (135) has a closure part (135b) made of an elastic sheet, and the closure part (135b) has the opening area of the opening part (B) provided in the sample collection well (135), and*

*wherein the elastic sheet is selected from a group consisting of low-density polyethylene, linear low-density polyethylene, middle-density polyethylene, nylon, cast polypropylene, ethylene-vinyl alcohol copolymer, silicone,*

*polyurethane, polyvinyl alcohol, and polyvinyl chloride."*

VII. Claim 1 of the first auxiliary request is based on claim 1 of the main request with the following amendments (underlining indicates addition):

*"... in the sample collection well (135),  
wherein a diameter (a) of an opening part of the  
closure part (135b) is smaller than a diameter of  
the opening part of the sample holding well  
(131),  
wherein the diameter of the opening part (B) included  
in the closure part (135b) of the sample  
collection well (135) is not more than 15% of the  
diameter of the opening part included in the  
sample holding well (131), and  
wherein the elastic sheet is selected from a group ..."*

VIII. Claim 1 of the second auxiliary request which served as the basis for the impugned decision and which was originally pursued together with the statement setting out the grounds of appeal is based on claim 1 of the main request with the following amendments (strike-through indicates deletion, while underlining indicates addition):

*"... an opening area of an opening part (B) provided in  
the sample collection well (135) is smaller than  
an opening area of an opening part included in  
the sample holding well (131), and  
wherein the sample collection well (135) has a closure  
part (135b) made of an elastic sheet, and the  
closure part (135b) has the opening area of the  
opening part (B) provided in the sample  
collection well (135), and*

~~wherein the elastic sheet is selected from a group consisting of low-density polyethylene, linear low-density polyethylene, middle-density polyethylene, nylon, cast polypropylene, ethylene-vinyl alcohol copolymer, silicone, polyurethane, polyvinyl alcohol, and polyvinyl chloride~~

the method further comprising a step of harvesting a chemical held in a chemical well (136) and moving the chemical to the detection chip (10) via the liquid harvesting section (137), an area of an opening part of the chemical well (136) being made to be smaller than an area of the opening part of the sample holding well (131), wherein in the remaining sample collection step (S80), the remaining sample is moved from the sample holding well (131) to the chemical well (136) that serves as the sample collection well (135)."

IX. Claim 1 of the second auxiliary request submitted with the letter of 13 October 2025 is based on claim 1 of the previous second auxiliary request (see point VIII. above) with the following amendments (strike-through indicates deletion, while underlining indicates addition):

"... via the liquid harvesting section (137), the sample collection well (135) collecting the remaining sample from the sample holding well (131),  
... provided in the sample collection well (135), and ~~the method further comprising a step of harvesting a chemical held in a chemical well (136) and moving the chemical to the detection chip (10) via the liquid harvesting section (137), an area of an opening part of the chemical well (136) being~~

~~made to be smaller than an area of the opening part of the sample holding well (131), wherein in the remaining sample collection step (S80), the remaining sample is moved from the sample holding well (131) to the chemical well (136) that serves as the sample collection well (135), before the remaining sample collection step (S80), a step of harvesting a chemical held in the sample collection well (135) and moving the chemical to the detection chip (10) via the liquid harvesting section (137)."~~

- X. The appellant's arguments, insofar as they are relevant to the present decision, are summarised as follows:

For the admissibility of the appeal it was not necessary to convince the board but merely to argue why the requests fulfilled the requirements of the EPC. This meant explaining why the subject-matter defined in the independent claims of the main request and the first auxiliary request was inventive, and why the subject-matter defined in the independent claims of the second auxiliary request was clear. No clear instruction existed in the EPC what exactly the statement setting out the grounds of appeal must include or which arguments and reasoning must be contained in it. With regard to the main request, the appellant submitted that it was obvious and implicit in the statement setting out the grounds of appeal that the objected feature (iii) was not a standard selection and consequently was not part of the common general knowledge. Similarly for the first and second auxiliary requests, the appellant submitted that its statement setting out the grounds of appeal had sufficiently dealt with the impugned decision in order to consider the appeal substantiated, independently from being

convincing or not. With regard to the second auxiliary request, it was sufficient to state that the claims were considered clear, in contrast to the examining division who considered them unclear. More detailed arguments with regard to the admissibility of the appeal are dealt with in the Reasons for the Decision.

### **Reasons for the Decision**

Admissibility of the appeal - Article 108, third sentence, EPC and Rule 99(2) EPC

1. To comply with the requirement of presenting a reasoned statement setting out the grounds of appeal under Article 108, third sentence, EPC and Rule 99(2) EPC, the grounds of appeal should state the legal or factual reasons why the impugned decision should be set aside (see T 922/05, Reasons 3, and *Case Law of the Boards of Appeal of the EPO*, 11th edition 2025 ("*Case Law*"), V.A.2.6.3 c), d) and g)). This principle is also mirrored in Article 12(3) RPBA. Under this provision, the statement setting out the grounds of appeal must contain a party's complete appeal case. Accordingly, the party must set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on.

The present board concurs with the following statements made in decision T 922/05 (Reasons for the decision, point 20), dealing with Article 10a(2) RPBA 2003 (OJ EPO 2003, 61) which is an essentially identical predecessor provision to Article 12(3) RPBA (regarding the wording of Article 10a(2) RPBA 2003, see T 922/05, Reasons for the decision, point 4).

*"Though Article 10a (2) RPBA have [sic] been adopted primarily with an eye towards regulating late-filed submissions, the board is guided by the very same principle when applying it to an appeal with apparently insufficient grounds. Such an appeal can hardly constitute the complete case of the appellant, because the insufficiency of the grounds will inevitably trigger later submissions from the appellant, seeking to complete the insufficient grounds so as to make them sufficient. Thus rejecting an appeal as inadmissible on the basis of insufficiency of grounds equals to the judgement of the board that sufficiency only could have been established by later submissions, which necessarily would have contravened Article 10a (2) RPBA."*

This is also reflected in the Case Law, V.A.2.6.3 d)):

*"Where the applicant in the grounds of appeal repeats its arguments set out during the examination phase without taking into account the decision under appeal, it mistakes the function of the boards of appeal; they are not a second go at the examination procedure, but are meant to review decisions made by the examining divisions, based on the objections raised against the decision in the grounds of appeal, which must therefore relate to the reasons on which the decision under appeal is based."*

In other words, claim requests can be deemed sufficiently substantiated only if they address all the relevant grounds set out in the decision under appeal which preclude patentability. Only then has a case for

setting the decision aside been made (see *Case Law*, V.A.2.6.3 d) and g)). Thus, if a statement setting out the grounds of appeal is not sufficiently substantiated, this leads to the inadmissibility of the appeal.

2. As will be set out in the following, neither the main request nor the first or second auxiliary requests filed with the statement setting out the grounds of appeal have been sufficiently substantiated in said statement.

- 2.1 Main request

- 2.1.1 When arguing lack of inventive step of the subject-matter of claims 1, 10 and 11 of the main request, the examining division established three differentiating features, namely features (i) to (iii), between claim 1 and document D1 as closest prior art. It then argued that differentiating features (i) and (ii) were disclosed in either document D10 or document D11 (Reasons for the Decision, point 12.3). Regarding differentiating feature (iii) (a list of polymer materials from which the elastic sheet can be made), the examining division argued that while it was true that documents D10 and D11 did not disclose this feature, "*the claimed list of polymer materials contains materials that are very-well known and commonly used for their elastic properties and the skilled person would therefore consider them as straightforward options for forming the elastic sheet of document D10*" (see decision under appeal, point 12.3). The examining division then concluded that the claimed method is "*considered not inventive in view of the combination of documents D1 and D10 with common general knowledge*" (underlining by the board).

2.1.2 In the statement setting out the grounds of appeal, the appellant merely argued that neither document D1 nor document D10 nor document D11 anticipated or suggested differentiating feature (iii) (see statement setting out the grounds of appeal, page 3, third to last paragraph). In other words, the appellant failed to address the examining division's argument reproduced in point 2.1.1 above, in particular the argument that the list of elastic sheet material was part of the common general knowledge.

2.1.3 The board disagrees with the appellant's assertion that the statement setting out the grounds of appeal for the main request obviously or implicitly included any reference to common general knowledge, or that such an understanding could be implicitly inferred. In particular, the following two references in the statement setting out the grounds of appeal, to which the appellant referred in order to prove sufficient substantiation, concern only the combination of documents D1, D10 and/or D11 without considering explicitly or implicitly the common general knowledge:

- "... neither document D1 nor document D10 ... nor document D11 ... anticipates or suggests that ..." (statement setting out the grounds of appeal, page 3, third paragraph from below)
- "... the skilled person considering documents D1, D10 and D11 (either alone or in combination) is not led towards the subject-matter of the present independent claims 1, 10 and 11 without requiring an inventive activity" (statement setting out the grounds of appeal, page 3, penultimate paragraph).

Therefore, the examining division's argument regarding lack of inventive step with regard to differentiating feature (iii), which is based on common general knowledge, was not addressed by the appellant in its statement setting out the grounds of appeal. This cannot be understood as being obviously or implicitly implied in the aforementioned formulation of the grounds of appeal. Other passages in the statement are less relevant in this regard.

Finally, the appellant states in its letter of 13 October 2025 that "*[t]he Applicant's grounds of appeal directly challenge this by arguing that a specific selection from a broad class of known materials, even if individually known, is not necessarily obvious, particularly when integrated into a specific solution to a technical problem*". The board could not find any such passage in the statement setting out the grounds of appeal. Also during the oral proceedings before the board, the appellant could not explicitly indicate any such passages in the statement setting out the grounds of appeal. Therefore, the appellant could not convince the board that the examining division's reasoning regarding feature (iii) being part of the common general knowledge was sufficiently addressed in the statement setting out the grounds of appeal.

- 2.1.4 As an aside, the board notes that the above-cited passage in the letter of 13 October 2025 provides the reasoning necessary for a substantiation in view of feature (iii) of the main request. However, as this was not stated in the statement setting out the grounds of appeal, but only in the letter of 13 October 2025, it was submitted too late to be considered in relation to the admissibility of the appeal.

2.1.5 Hence, the appellant did not properly substantiate its appeal case regarding the main request.

2.2 First auxiliary request

2.2.1 When arguing lack of inventive step of the subject-matter of claims 1, 10 and 11 of the first auxiliary request, the examining division established the two features that had been added to these claims compared to the corresponding claims of the main request. It then argued in point 13.2 of the decision under appeal that these features were disclosed in document D10 (or at least obvious in view of this document) because "*the skilled person knows that, during its operation, the self-sealing probe port 554 of document D10 will exhibit a hole when a pipette is inserted therein and, when the pipette is retracted, the self-sealing function of the port will result in the diameter of this hole to reach zero, which means that the diameter will go through a state where it is not more than 15% of the diameter of the opening part of the sample holding well 555*".

The examining division subsequently addressed a counter-argument provided by the appellant during the oral proceedings before the examining division according to which port 554 of document D10 did not actually exhibit a hole since the port was self-sealing. The examining division argued that "*a hole is formed when the sample is disposed through the self-sealing port*".

2.2.2 In the statement setting out the grounds of appeal, the appellant merely stated that document D10 did not anticipate or suggest the two features added to claim 1

of the first auxiliary request (see statement setting out the grounds of appeal, page 5, first full paragraph). In other words, the appellant failed to address the examining division's arguments reproduced in point 2.2.1 above.

2.2.3 The impugned decision, point 13.2, explicitly mentions that *"the self-sealing function of the port will result in the diameter of this hole to reach zero, which means that the diameter will go through a state where it is not more than 15% of the diameter of the opening part of the sample holding well 555"*. Starting from this argument, it is not sufficient to simply state that documents D10 and D11 do *"neither anticipate nor suggest"* this feature. The examining division explicitly explained why it considered the size of the *"diameter of the opening part (B)"* anticipated by the self-sealing hole disclosed in documents D10 and/or D11. Since the appellant did not address this specific argument in its statement setting out the grounds of appeal, the substantiation with regard to the first auxiliary request is not sufficient.

2.2.4 Hence, the appellant did not properly substantiate its appeal case regarding the first auxiliary request.

2.3 Second auxiliary request

2.3.1 When arguing lack of clarity of claims 1, 9 and 10 of the second auxiliary request, the examining division objected to the sample collection well not being *"of any use or even present in the claimed method"* because of the amendments made to these claims (see decision under appeal, point 14.2). The examining division then went on to address the appellant's counter-argument made during the oral proceedings that paragraph [0067]

of the description disclosed that the chemical well could be used as a sample collection well. The examining division addressed this counter-argument by stating that *"the cited passage does not contribute in clarifying whether the sample collection well is present in addition to the chemical well or not and whether the sample collection well and the chemical well interact in any way in the claimed method"*.

2.3.2 In the statement setting out the grounds of appeal, the appellant merely referred again to paragraph [0067] of the description and concluded that the chemical well and the sample collection well were one and the same member and that therefore the feature added to claim 1 of the second auxiliary request was clear (see statement setting out the grounds of appeal, page 5, last two paragraphs). In other words, the appellant failed to address the examining division's arguments reproduced in point 2.3.1 above.

2.3.3 In the board's view, a sufficiently substantiated appeal must address not simply the relevant topics objected to in the impugned decision but the specific relevant arguments set out by the first instance panel why the claimed subject-matter did not fulfil the requirements of the EPC. With regard to the second auxiliary request it is not sufficient to state that claim 1 is clear contrary to the examining division's statement, as argued by the appellant. The examining division explicitly provided reasons why the subject-matter of claim 1 lacks clarity, namely because three holes were defined in claim 1, whereby the exact meaning and task of the third hole remained unclear, i.e., whether this hole still had to be present or not and what features this third hole had. This argument was not addressed in the statement setting out the

grounds of appeal, in which the appellant only reiterated its arguments already put forward during the first-instance proceedings.

2.3.4 The objected lack of clarity could have been easily addressed by filing an amended set of claims, as the appellant did together with the letter of 13 October 2025, by filing the amended second auxiliary request. However, the missing substantiation in the statement setting out the grounds of appeal could not be overcome by this late filing.

2.3.5 Hence, the appellant did not properly substantiate its appeal case regarding the second auxiliary request which served as basis for the impugned decision.

### 3. Conclusion

Since the main request, the first auxiliary request and the second auxiliary request which were pursued in the statement setting out the grounds of appeal were not sufficiently substantiated in the statement setting out the grounds of appeal with regard to the examining division's reasoning set out in the impugned decision, the appeal does not meet the requirements of Article 108, third sentence, EPC and Rule 99(2) EPC. As a consequence the appeal is inadmissible.

Moreover, since the appeal is inadmissible, the amended second auxiliary request filed with the letter of 13 October 2025 can be left uncommented.

**Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



S. Sánchez Chiquero

M. Papastefanou

Decision electronically authenticated