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

Case Number: T 1852/23 - 3.2.04

Application Number: 13821976.1

Publication Number: 2911536

IPC: A24C5/47, A24D3/02

Language of the proceedings: EN

Title of invention:

ASSEMBLY MACHINE FOR PRODUCING CIGARETTES, AND RELATIVE
ASSEMBLY METHOD

Patent Proprietor:

G.D Societa' per Azioni

Opponent:

Körber Technologies GmbH

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - extension beyond the content of the application
as filed (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1852/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 25 November 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
28 September 2023 concerning maintenance of the
European Patent No. 2911536 in amended form.**

Composition of the Board:

Chairman A. Pieracci
Members: J. Wright
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. The appeal was filed by the opponent against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 2, the patent in suit met the requirements of the EPC. The proprietor also lodged an appeal against the above decision which it subsequently withdrew, so the proprietor is now respondent (see point II).

Amongst other things, the opposition division decided that the subject-matter of the claims of this request did not extend beyond the content of the application as filed.

- II. Oral proceedings were held before the Board. During the oral proceedings the proprietor withdrew its appeal.
- III. The appellant-opponent requests that the decision under appeal be set aside and that the patent be revoked.

The proprietor requested that the patent be maintained as granted, in the alternative that the patent be maintained in amended form according to one of auxiliary requests 1 to 9 filed with letter of 31 January 2024 or according to one of auxiliary requests 10 to 14 filed with letter of 27 October 2025.

- IV. Independent claim 1 of auxiliary request 2 (as maintained) reads as follows (with feature references added by the Board in square brackets):

"[M1] An assembly machine (1) for producing multicomponent cigarettes (2), each comprising a number of portions (3), which have a central axis (X) and

comprise at least one portion (3) defined by a filter element, and at least another portion (3) defined by an aromatic, preferably tobacco-based, element; the assembly machine (1) comprising:

[M2] a combining unit (CU) for forming groups (4) of portions (3), each comprising at least two different first portions (3A, 3B, 3C) aligned axially and contacting end to end, and in which the groups (4) of portions (3) travel perpendicularly to their central axis (X);

[M3] the combining unit (CU) comprises a number of structurally identical feed stations (6), each for supplying a respective first portion (3A, 3B, 3C) to form the groups (4) of portions (3); and

[M4] each feed station (6) comprises an insertion drum (11), which receives the groups (4) of portions from a preceding feed station (6) or creates the groups (4) of portions, receives respective first portions (3A, 3B, 3C), and inserts the respective first portions (3A, 3B, 3C) into the groups (4) of portions (3);

[M5] wherein each group (4) of portions (3) is not wrapped with any sheet of wrapping material (26) in the combining unit (CU); and

[M6] a first wrapping unit (WU₁), which receives a succession of groups (4) of portions (3), aligned axially and contacting end to end, from the combining unit (CU), feeds the groups (4) of portions (3) perpendicularly to their central axis (X), and winds a single first sheet of wrapping material (26) around the whole circumference of each group (4) of portions (3); and

[M7] a second wrapping unit (WU₂), which receives a succession of groups (4) of portions (3) from the first wrapping unit (WU₁), feeds the groups (4) of portions (3) perpendicularly to their central axis (X), and winds a single second sheet of wrapping material (44)

around the whole circumference of each group (4) of portions (3);

[M8'] wherein the second wrapping unit (WU₂) comprises a first wrap feed unit (45) for supplying second sheets of wrapping material (44); and a first portion feed unit (38) located upstream from the first wrap feed unit (45) for inserting second portions (3E) into the groups (4) of portions (3); the assembly machine (1) being characterized in that

[M9'] the first portion feed unit (38) of the second wrapping unit (WU₂) comprises a hopper (39) containing a mass of second portions (3E),

[M10] a cutting drum (41) for cutting the second portions (3E) transversely to the desired length; and

[M11] a pickup drum (40), which withdraws the second portions (3E) successively from the hopper (39) and cooperates with the cutting drum (41)".

Claim 1 of auxiliary request 3 reads as for auxiliary request 2 except that at the end of the claim, the following feature is added:

"and by comprising a transfer unit (TU) interposed between the combining unit (CU) and the first wrapping unit (WU₁), fitted to a frame (5), and comprising a device (13) defined by a drum (14), which rotates continuously about an axis of rotation and supports a number of peripheral members, each with a suction pickup head, and receives the groups (4) of portions (3) from the combining unit (CU) and feeds them successively to the first wrapping unit (WU₁)".

Claim 1 of auxiliary requests 4 and 10 read as auxiliary request 2 except that feature M8' is replaced by the following feature: "wherein the second wrapping unit comprises a first portion feed unit for inserting

second portions into the groups of portions; the assembly machine being characterized in that", in that feature M9' is replaced by the following feature: "the second wrapping unit comprises a hopper containing a mass of second portions," and in that the following feature is added at the end of the claim:

"and by comprising a transfer unit (TU) interposed between the combining unit (CU) and the first wrapping unit (WU₁), fitted to a frame (5), and comprising a device (13) defined by a drum (14), which rotates continuously about an axis of rotation and supports a number of peripheral members, each with a suction pickup head, and receives the groups (4) of portions (3) from the combining unit (CU) and feeds them successively to the first wrapping unit (WU₁)".

Claim 1 of auxiliary requests 5 and 11 reads as for auxiliary request 2 except that feature M8' is replaced by the following feature: "wherein the second wrapping unit comprises a first portion feed unit for inserting second portions into the groups of portions; the assembly machine being characterized in that", in that feature M9' is replaced by the following feature: "the second wrapping unit comprises a hopper containing a mass of second portions," and in that the following feature is added at the end of the claim:

"and in that the single first sheet of wrapping material (26) or the single second sheet of wrapping material (44) extends for the entire width of each group (4) of portions (3)".

Claim 1 of auxiliary request 6 reads as follows:

"A method of producing multicomponent cigarettes (2), each comprising a number of portions (3), which have a central axis (X) and comprise at least one portion (3) defined by a filter element, and at least another portion (3) defined by an aromatic, preferably tobacco based, element; the method comprising the steps of: forming groups (4) of portions (3), each comprising at least two different first portions (3A, 3B, 3C, 3D) aligned axially and contacting end to end; feeding the groups (4) of portions (3) perpendicularly to their central axis (X); winding a first sheet of wrapping material (26) around the whole circumference of each group (4) of portions (3); supplying further portions (3E) from a hopper (39) which houses a mass of further portions (3E), and has a bottom outlet connected to a pickup drum (40), which cooperates with a blade (41) for cutting further portions (3E) transversely into portions (3E) of desired length; transversely cut each group (4) of portions (3) centrally into two specular groups (4) of portions (3) coaxial with central axis (X) and contacting end to end; parting axially each two groups (4) of portions (3) so they are positioned coaxial and at a given axial distance apart; inserting further portions (3E) into the groups (4) of portions (3), once a tubular wrapping is formed from the first sheet of wrapping material (26) around each group (4) of portions (3); and winding a second sheet of wrapping material (44) around the whole circumference of the group (4) of portions".

Claim 1 of auxiliary requests 7 and 12 reads as for auxiliary request 2 except that feature M8' is replaced by the following feature: "wherein the second wrapping unit comprises a first portion feed unit for inserting second portions into the groups of portions; the assembly machine being characterized in that", in that

feature M9' is replaced by the following feature: "the second wrapping unit comprises a hopper containing a mass of second portions," and in that the following feature is added to the end of the claim:

"and in that the first wrapping unit (WU₁) comprises a first wrap feed unit (27) for supplying first sheets of wrapping material (26); and a second portion feed unit (17) located upstream from the first wrap feed unit (27) to insert the second portions (3D) into the group (4) of portions (3)."

Claim 1 of auxiliary requests 8 and 13 reads as for auxiliary request 2 except that feature M8' is replaced by the following feature: "wherein the second wrapping unit comprises a first portion feed unit for inserting second portions into the groups of portions; the assembly machine being characterized in that", in that feature M9' is replaced by the following feature: "the second wrapping unit comprises a hopper containing a mass of second portions," and in that the following feature is added at the end of the claim:

"and by comprising a tip-turning drum (52) at the end of assembly machine (1) on which one line of cigarettes (2) is turned into the same orientation as another line of cigarettes (2) alongside it, thus converting the two side by side lines of cigarettes (2) into one line of cigarettes (2)"

Claim 1 of auxiliary requests 9 and 14 reads as for auxiliary request 2 except that feature M8' is replaced by the following feature: "wherein the second wrapping unit comprises a first portion feed unit for inserting second portions into the groups of portions; the assembly machine being characterized in that", feature

M9' is replaced by the following feature: "the second wrapping unit comprises a hopper containing a mass of second portions," and in that the following feature is added to the end of the claim:

"and in that the combining unit (CU) comprises a frame (5), which rests on the floor and supports the feed stations (6) and in that the first wrapping unit (WU₁) and the second wrapping unit (WU₂) are also fitted to said frame (5)".

- V. The relevant arguments of the parties are dealt with in the reasons for the decision.

Reasons for the Decision

1. The opponent's appeal is admissible.
2. Background

The patent relates to an assembly machine for producing cigarettes and relative assembly method (published patent specification, paragraph [0001]).

3. Auxiliary request 2 (as maintained), claim 1, added subject matter, feature M5

During examination proceedings, the application was amended by adding to claim 1 feature M5: "each group (4) of portions (3) is not wrapped with any sheet of wrapping material (26) in the combining unit (CU)"

The opposition division considered this amendment in its decision (see reasons, section 25.9) in the context of the main request (as granted). It found that it did not add subject matter extending beyond the application

as filed. Since the feature is in all the independent claims to an "assembly machine", the division's finding likewise applied to these claims.

- 3.1 Admissibility of the appellant-opponent's objection that feature M5 adds subject matter

- 3.2 In its appeal grounds (page 6, penultimate paragraph), the appellant-opponent explicitly argued that the opposition division was wrong to have concluded (decision, reasons 30) that claim 1 of auxiliary request 2 did not add subject matter extending beyond the application as filed. Therefore, the Board has no doubt that the issue of added subject matter was raised at the start of the appeal proceedings. Moreover, as will be explained below, the Board considers that the appellant-opponent also substantiated this objection with respect to feature M5 in its appeal grounds.
 - 3.2.1 In those grounds (section V, 123(2) EPC for auxiliary request 2, in particular page 37 - feature M5), the appellant-opponent argued that feature M5 had no literal and unambiguous disclosure in the European application or the priority application. In this context it referred to its explanations under the previous section (IV). The latter section starts on page 9 and is headed "Keine wirksame Inanspruchnahme der Priorität" - No effective claim to priority. However, in the sub-section "Merkmal M5" - Feature M5 - starting on page 23, having talked about the priority document, the third paragraph states: "Darüber hinaus ist festzustellen, dass das Merkmal M5 überhaupt nicht wörtlich der italienischen Prioritätsanmeldung sowie der europäischen Patentanmeldung zu entnehmen ist" - Furthermore, it is to be determined that feature M5

cannot be found literally in the Italian priority application or the European patent application.

In the Board's view, the appellant's assertion in section IV that it should be determined that feature M5 was not to be found in the patent application can but pertain to an added subject matter objection rather than one disputing validity of the priority claim. Therefore, when the skilled person reads the opponent's explicit reference to section IV in section V (page 37 - added subject matter of feature M5), they would not reject it as an irrelevant anomaly because section IV's title relates to the patent's priority claim. Rather, although perhaps not ideally formulated because it mixes priority and added subject matter issues, the skilled person would read the parts of sections IV and V relevant to feature M5 together as a reasoned objection that feature M5 adds subject matter extending beyond the application as filed.

Moreover, the appellant-opponent argued (appeal grounds, page 24), as summarised by the Board, that feature M5 was an intermediate generalisation because a combining unit absent any wrapping unit was only originally disclosed as being bounded by a subsequent transfer unit and the failure to include this in the claim led to an intermediate generalisation. In the Board's view, whilst this argument does not explicitly mention the impugned decision, the Board holds that it implicitly addresses at least the opposition division's finding (reasons 25.9, top of page 8, last line of the first paragraph), that [there is no added subject matter because] the "combining unit is strictly upstream from the transfer unit". Thus, the Board holds that the appellant-opponent's added subject matter objection to feature M5 was a substantiated challenge

to the impugned decision that was on file from the start of the appeal proceedings, and it is validly present in the appeal proceedings and cannot be disregarded.

- 3.3 Auxiliary request 2, claim 1, substance of the added subject matter objection concerned with feature M5

Unless stated otherwise, references to the original filed application are to the published application in English (WO2014/064655).

- 3.3.1 Claim 1 as originally filed contained features M2 to M4 of the present claim. Thus it disclosed a combining unit CU comprising a number of structurally identical feed stations 6 which feed portions 3A, 3B and 3C. However, the original claim did not include feature M5. This amendment is said by the respondent-proprietor to have a basis in the drawings, figures 1 and 2.

- 3.3.2 The Board finds it useful to first consider the meaning of the term "combining unit" which is introduced in feature M2. Feature M2 sets out that the combining unit is for forming groups of portions [of cigarette components], so the combining it carries out is of portions into groups. The word "unit" in the context of the claimed assembly machine defines not more than a part of a machine. In the present case, the unit is defined by its function - that of combining - so the Board considers the combining unit in its broadest sense to be the part of the machine where combining takes place.

Feature M3 defines that the combining unit comprises a number of structurally identical feed stations. In this regard, the word *comprises* means that, whilst the claim

requires the combining unit to have a number of such identical feed stations, it does not exclude its having other non-identical feed stations. In other words, the claimed combining unit is not limited to one exclusively having structurally identical feed stations.

- 3.3.3 Turning to figures 1 and 2 of the application, it is not disputed that the part designated CU in figures 1 and 2 has a number of feed stations 6*, 6** and 6*** for portions and that the skilled person would also understand from the original description (sentence bridging pages 5 and 6) that the portions from hoppers 7 are combined into portion groups 4 in section CU, so this section fits the broad definition of a combining unit. The Board also agrees with the proprietor that, from figures 1 and 2 the skilled person would understand these feed stations 6 to be structurally identical.

However, the Board notes that the wrapping unit WU₁ in figure 1 has a further feed unit 17 with hopper 18. As described on page 10, lines 3 to 18, feed unit 17 supplies portions 3D and these are also *combined* (with the portions received from combining unit CU) into portion groups 4 on a "follow up combining drum" 16. Similarly, the wrapping unit WU₂ in figures 1 and 2 has a feed unit 38 with with hopper 39. As described on page 14, lines 11 to 25, the feed unit 38 introduces portions 3E which are *combined* on a combining drum 35 to make a final portion group 4.

- 3.3.4 From these figures and their description, the skilled person would thus understand that combining of portions not only happens in the part designated "combining unit

CU" but also in downstream wrapping unit WU₂ and in one embodiment also in the intermediate wrapping unit WU₁.

- 3.3.5 Therefore, the Board agrees with the appellant-opponent, that the skilled person would understand original figures 1 and 2 to disclose a combining unit that extends beyond the part referenced CU (combining unit) to include the parts referenced WU₁ (embodiment of figure 1 wrapping unit 1) and WU₂ (embodiments of figures 1 and 2, wrapping unit 2).
- 3.3.6 The skilled person would also see that in some parts of this combining unit (the machine parts where portions are combined), wrapping takes place (WU₁ and/or WU₂) and in another part (CU) no wrapping takes place. Therefore, the idea of a combining unit in its most general sense where no wrapping takes place was not originally disclosed. By amending the claim with feature M5, a new idea is introduced which restricts the concept of a *combining unit* as the skilled person would have understood it from the original disclosure, to the sub-unit CU, where no wrapping takes place.
- 3.3.7 The Board agrees with the appellant-opponent that this idea was only originally disclosed in the context of the sub-unit CU shown in the figures 1 to 3 which is delimited from the downstream combining parts by a transfer unit TU. This transfer unit forms a structural boundary, defining the downstream end of the part of the originally disclosed combining unit where no wrapping takes place and the upstream end of the part of the originally disclosed combining unit where wrapping does take place. The transfer unit also forms a functional link between these combining parts, in that it transfers groups of portions which have been combined but not wrapped to the downstream combining

part (WU₁ and/or WU₂) where wrapping also takes place, see for example published application, page 6, lines 2 to 6: "Transfer unit TU is located downstream from combining unit CU, to transfer portion groups 4 transversely [...] from combining unit CU to wrapping unit WU₁".

3.3.8 The transfer unit has however not been claimed. In the Board's view, by defining a combining unit where no wrapping takes place without the transfer unit, the skilled person is presented with a new teaching which was not originally disclosed. In other words, the present claim represents an intermediate generalisation which extends beyond the application as filed.

3.3.9 For these reasons, auxiliary request 2 (as maintained) fails.

4. Auxiliary request 3, claim 1, added subject matter

4.1 Amongst other things, claim 1 of auxiliary request 3 adds to claim 1 of auxiliary request 2 that the assembly machine comprises a transfer unit interposed between the combining unit and the first wrapping unit, fitted to a frame [...].

4.2 The appellant-opponent (see appeal grounds, page 80) argued that there was no basis in the application as filed for a transfer unit attached to a generic frame. Rather, so it argued, there was only a direct and unambiguous disclosure for the transfer unit being attached to the same frame to which the upstream combining unit CU and the first wrapping units WU₁ and WU₂ are attached. The Board agrees.

- 4.3 The amendment is said by the respondent-proprietor to have a basis in paragraph [0028] of the patent, which corresponds to the published application, page 9, lines 21 to 25. This paragraph starts with the words: "Transfer unit TU is also fitted to frame 5".
- 4.4 Considering this passage in isolation, "frame 5" has no article (neither definite nor indefinite). The Board understands this to be because "frame 5" is being used as a unique identifier which functions grammatically like a proper name. In other words, it is inherently definite in that it is the name of a specific frame already known to the reader. Had the author of the application intended the frame to be one not already known to the reader, it would have written, for example, "a frame". Moreover, the word *also* indicates that the transfer unit is a *further* element fitted to the frame 5, rather than the former having its own dedicated frame.
- 4.5 This understanding is confirmed by reading the paragraph contextually. It is part of the description of figures 1 and 2 which starts with a paragraph on page 6, lines 20 to 25 of the published application (paragraph [0018] of the patent). This paragraph sets out that "[...the] combining unit CU comprises a frame 5 which rests on the floor and supports a number of structurally identical feed stations 6 [...]". As the appellant-opponent has pointed out (see its appeal grounds, page 81), also the two wrapping units are disclosed as being attached to the frame 5 (published application, page 10, line 3 and page 13, line 15). Therefore, contrary to how the respondent proprietor has argued, the Board sees the frame 5 to which the transfer unit is fitted to be a specific frame, namely

the frame to which the feed stations 6 and wrapping units WU₁ and WU₂ are likewise fitted.

4.6 In the Board's view, by amending the claim to define that the transfer unit is fitted to "a frame", without specifying that the same frame supports the claimed structurally identical feed stations and wrapping stations, the reader is presented with new information which was not directly and unambiguously disclosed in the application as filed.

4.7 The respondent-proprietor has also argued that the frame is not technically related to the other parts of the machine so it can be claimed only in relation to the transfer unit. In the Board's view this is not the case. In the original disclosure the transfer unit and other claimed parts (wrapping units) are *fitted* to the frame and it *supports* other elements which are claimed (identical feed stations 6). Both *fitting* and *supporting* define structural and functional technical relationships between the common frame 5 and these elements. Therefore, the idea that the frame has no technical relationship to these elements is moot, and with that the argument justifying claiming the frame only in relation to the transfer unit fails.

4.8 For these reasons the Board finds that claim 1 adds subject matter extending beyond the application as filed. Therefore auxiliary request 3 fails.

5. Auxiliary request 4, claim 1 added subject matter

As with auxiliary request 3, claim 1 of auxiliary request 4 has the (no wrapping) feature M5 as well as the last feature of auxiliary request 3 (transfer unit fitted to a frame). For at least the reasons discussed

above for auxiliary request 3, auxiliary request 4 adds subject matter extending beyond the application as filed, and thus fails.

6. Auxiliary request 5, claim 1, added subject matter

Claim 1 has the feature M5 (no wrapping) but does not define a transfer unit. It thus adds subject matter extending beyond the application as filed for at least the reasons discussed above for auxiliary request 2. Therefore, this request also fails.

7. Auxiliary request 6, claim 1, added subject matter

7.1 Method claim 1 is based on claim 16 as originally filed but is amended to add, amongst others, the method steps:

- transversely cut each group (4) of portions (3) centrally into two specular groups (4) of portions (3) coaxial with central axis (X) and contacting end to end;
- parting axially each two groups (4) of portions (3) so they are positioned coaxial and at a given axial distance apart

7.2 The respondent-proprietor has argued that the basis for these amendments is the published application, page 13, lines 7 to 24 and figures 4 and 5.

On page 13, the first of the above method steps is taken from the passage that reads :

"Wrapping unit WU_1 comprises a known intermediate part 31 (not described in detail) comprising a number of drums, on which portion groups 4 are fed transversely

from rolling drum 30 to a cutting drum 32, which cooperates with a blade 33 to transversely cut each portion group 4 centrally, at portions 3A, into two specular portion groups 4 coaxial with central axis X and contacting end to end".

7.3 In the Board's view, here the step of transversely cutting the portion groups is a part of a sequence of steps. It is only originally disclosed functionally linked to the preceding step of feeding the portion groups 4 transversely from a rolling drum to a cutting drum. By claiming the cutting step without the transversal feeding step, the claim extracts the originally disclosed act of cutting from its original tight functional context of transversely feeding the portion groups to a cutting drum and presents it in a more general setting. It therefore constitutes an unallowable intermediate generalisation which adds subject matter extending beyond what was directly and unambiguously disclosed.

7.4 Similarly, the second of the added method steps (parting axially) is originally disclosed (published application, page 13, lines 17 to 24) as part of a functionally linked sequence of steps in which the wrapping unit WU_2 transfers portion groups successively from the cutting drum to a parting drum, where the claimed parting step takes place. Claiming the parting step without the successive transferring step is to generalise its original functional context in which portion groups are successively transferred to the parting drum from the cutting drum. Therefore, in the Board's view this represents a further inadmissible intermediate generalisation.

- 7.5 In this regard, the Board is not convinced by the respondent-proprietor's argument that the amendments extract only the operational steps from the original disclosure on page 13 of the published application and merely leave device features out, which play no role in a method claim. Whatever the rights or wrongs of the idea that no unallowable generalisation ensues by leaving off originally disclosed references to, for example, the cutting drum and parting drum means by which the claimed cutting and parting steps are respectively carried out and extracting only the operational features in isolation, the amendments not only leave out the means by which the claimed operating steps of cutting and parting but also associated originally disclosed operational features: Portion groups are "fed transversely" to the cutting drum (published application, page 13, line 9), but this particular feeding has not been claimed. By the same token, the wrapping unit WU₂ "transfers portion groups 4 successively" [to a parting drum] (published application, page 13, lines 18 to 20), but this has not been claimed. Therefore, the argument is moot.
- 7.6 The Board is also not convinced by the respondent-proprietor's argument that the *cutting* and *parting* steps added to claim 1 find a basis in figures 4 and 5 of the application as filed.
- 7.7 Figures 4 and 5 show specific groups of components at various stages in the manufacturing process. It is not evident to the Board, nor has the respondent-proprietor explained where the claimed operational steps of "transversely cut[ting] centrally" and "parting axially" groups of portions might be disclosed in these drawings. Indeed, the only specific explanation it has offered for these steps was the description on page 13

of the published application, which has been discussed above. In the Board's view, at most the figures might support what is explained on page 13, but the skilled person approaching figures 4 and 5 without hindsight knowledge of the present amendments would not abstract from them the direct and unambiguous disclosure of the specifically claimed steps of central cutting and parting axially groups of portions so that they are positioned coaxially and at a given axial distance.

7.8 For these reasons, the Board considers that claim 1 adds subject matter extending beyond the application as filed.

8. Auxiliary requests 7 to 9, claim 1, added subject matter

8.1 Claim 1 of auxiliary requests 7 to 9 have feature M5 (combining unit where no wrapping takes place) but they do not claim the transfer unit. These requests thus add subject matter for at least the reasons discussed for auxiliary request 2. Therefore, auxiliary requests 7 to 9 fail.

8.2 Auxiliary requests 10 to 14

Claim 1 of these requests are the same as claim 1 of higher ranking requests which have already been discussed and found to add subject matter extending beyond the application as filed.

In particular claim 1 of auxiliary requests 10 and 11 reads as claim 1 of auxiliary requests 4 and 5 respectively, and claim 1 of auxiliary requests 12 to 14 read as claim 1 of auxiliary requests 7 to 9 respectively. Therefore, without prejudice to the

question of admissibility of these requests, all of them fail for corresponding reasons of added subject matter extending beyond the application as filed found for auxiliary requests 4, 5 and 7 to 9.

9. Main request and auxiliary request 1

These requests were not explicitly withdrawn by the patent proprietor when withdrawing its appeal. Independently of whether they were meant to be withdrawn with the appeal or to be maintained in the appeal proceedings, the Board notes that since claim 1 of these requests has feature M5 without claiming the transfer unit they are at least not allowable for the same reasons as auxiliary request 2 (patent as maintained).

10. Auxiliary request 2 (as maintained) was found not to be allowable. Therefore, the Board must set aside the impugned decision. All the respondent-proprietor's remaining requests have been found to be not allowable. Therefore, the Board must revoke the patent.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated