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**Datasheet for the decision
of 12 May 2026**

Case Number: T 2043/23 - 3.5.01

Application Number: 16711269.7

Publication Number: 3273809

IPC: A24F40/53

Language of the proceedings: EN

Title of invention:

HEATER MANAGEMENT

Patent Proprietor:

Philip Morris Products S.A.

Opponent:

Imperial Tobacco Limited

Headword:

Resistance-based temperature monitoring/PHILIP MORRIS PRODUCTS

Relevant legal provisions:

EPC Art. 54, 56, 100(a)

RPBA 2020 Art. 11

Keyword:

Application of G 1/24 - explanatory, non scope-altering, use of the description (yes - in line with G 1/24)
Inventive step - using measured heater's resistance at room temperature for further calculations (no - obvious) - monitoring whether the heater's resistance reaches a threshold value outside of an expected time period (yes - no hint in prior art)

Decisions cited:

G 0001/24, T 0439/22, T 2027/23

Catchword:

[T]he Board notes that the present case differs from situations such as that in decision T 439/22 (reasons, points 2.4, 3.4 and 6), in which the description and drawings were relied upon to broaden the scope of a claim beyond what was conveyed by the claim wording read in isolation.

Here, by contrast, the description served an explanatory and confirmatory function by assisting the skilled reader in recognising an embodiment already encompassed by the claim wording, without altering the scope of the claim.

...

This modest explanatory and confirmatory use of the description is consistent with the principles set out in G 1/24 (see T 2027/23 - *Turnable ladder/IVECO*, reasons, point 3.5.2).

(See points 2.9 and 2.10 of the reasons)



Beschwerdekammern

Boards of Appeal

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Case Number: T 2043/23 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 12 May 2026

Appellant: Philip Morris Products S.A.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 31 October 2023
concerning maintenance of the European Patent
No. 3273809 in amended form.

Composition of the Board:

Chairwoman I. Kürten
Members: W. Zubrzycki
C. Schmidt

Summary of Facts and Submissions

- I. The case concerns appeals filed by the patent proprietor (hereinafter proprietor) and the opponent against the opposition division's interlocutory decision to maintain European patent No. EP 3 273 809 in amended form on the basis of the first auxiliary request.
- II. The opposition division found that the main request lacked novelty over document D14 (WO 2014/203083 A2) and that the first auxiliary request was novel and involved an inventive step over the combination of D14 and D4 (EP 2 468 117 A1).
- III. In the statement setting out the grounds of appeal, the proprietor requested that the decision be set aside and that the patent be maintained in amended form on the basis of the main request, which is identical to the main request considered in the decision and whose claims were filed in reply to the notice of opposition.

Alternatively, the proprietor requested that the patent be maintained in amended form on the basis of the first auxiliary request, or auxiliary requests 2 to 8, all filed with the statement of grounds of appeal, or auxiliary requests 2A, 3A, 4A and 6A, filed with the proprietor's reply of 15 July 2024.
- IV. The opponent requested, in their statement setting out the grounds of appeal, that the decision of the opposition division be set aside and that the patent be revoked in its entirety.

V. The parties were summoned to oral proceedings. In the communication under Article 15(1) RPBA, the Board set out its preliminary opinion that claim 1 of the main request was novel over D14 and informed the parties that it intended to discuss inventive step of that request starting from D14 at the oral proceedings. Furthermore, the Board expressed the preliminary opinion that claim 1 of the first auxiliary request involved an inventive step over the combinations of D14 with D4 and D2 (WO 2014/040988 A2) with D4.

VI. Following their grounds of appeal and before the issuance of the Board's communication, both parties submitted a further substantial reply, and the opponent filed a further reply after the communication had been issued.

VII. Oral proceedings were held by videoconference on 12 May 2026.

During the oral proceedings, the proprietor withdrew their appeal.

The opponent's final requests were that the decision be set aside and the patent be revoked. The proprietor's final request was that the opponent's appeal be dismissed.

At the end of the oral proceedings, the chairwoman announced the decision.

VIII. Claim 1 of the main request reads as follows (with feature labelling essentially as in the decision):

1.1 An electrically operated aerosol generating system comprising:

1.2 an electric heater comprising at least one heating element for heating an aerosol-forming substrate
1.3 a power supply
1.4 and electric circuitry connected to the electric heater and to the power supply
1.5 and comprising a memory
1.6 wherein the electric circuitry is configured to measure the initial electrical resistance of the heater element
1.7 and an electrical resistance of the heater element at a time after initial delivery of power to the electric heater from the power supply
1.8 and to determine an adverse condition when a ratio between the measured initial electrical resistance of the heater and a change in electrical resistance from the measured initial resistance
1.8a is greater than a maximum threshold value
1.8b or is less than a minimum threshold value stored in the memory
1.8c or when the ratio reaches a threshold value stored in the memory outside of an expected time period
1.9a and to limit the power supplied to the electric heater
1.9b or to provide an indication, if there is an adverse condition

IX. Claim 1 of auxiliary request 1 removes features 1.8a and 1.8b and deletes parts of feature 1.8c, as indicated below:

1.8 [the electric circuitry is configured] to determine an adverse condition when a ratio between the measured initial electrical resistance of the heater and a change in electrical resistance from the measured initial resistance
1.8c ~~when the ratio reaches~~ a threshold value stored in

the memory outside of an expected time period

- X. Insofar as relevant for the decision, the arguments of the parties are discussed below.

Reasons for the Decision

Technical background

1. The claimed invention concerns an electronically operated aerosol-generating system. In one disclosed example, not reflected in the claim, this system might be an electrically heated smoking system, see paragraphs [1] and [107] of the patent. The system comprises an electric heater connected to a power supply and including a heating element for heating an aerosol-forming substrate. While not claimed, this heating produces an aerosol inhaled by a smoker, see [151].

Furthermore, the system includes an electronic circuitry, adapted to determine an adverse condition influencing the heating process, see [12] to [14]. If such a condition is determined, the electronic circuitry either limits power supplied to the electric heater from the power supply or provides an indication. Although not claimed, examples of such adverse conditions might be the depletion of the heated aerosol-forming substrate ([12]) or the use of an incompatible (e.g. counterfeit) heater ([14]).

The invention exploits the fact that the temperature of the heating element is related to its electrical resistance, see [122] and [124]. To detect the adverse condition, the electronic circuitry measures the heating element's initial resistance and its resistance

at a time after the initial delivery of power. The adverse condition is then determined based on the measured resistances and a threshold value stored in memory.

The discussion in this appeal focuses on claim features which concern the nature of this threshold and the manner in which the comparison is carried out.

Main request

Novelty over D14

2. The Board disagrees with the opposition division's finding and judges that claim 1 is novel over document D14 (Articles 100(a) and 54 EPC).

Admissibility of D14

- 2.1 The opposition division admitted the late-filed document D14 into the proceedings, considering it *prima facie* relevant to the assessment of novelty, see decision, point 10. The reason for this *prima facie* relevance was that D14 disclosed measuring an electric heater's resistance at room temperature - a feature missing in D2 and other documents that had been discussed earlier in the proceedings, see decision, point 10.2.

The Board judges that the opposition division's decision to admit D14 constituted a proper exercise of discretion. As discussed below, their assessment of D14's relevance was not only reasonable at the *prima facie* stage but is also confirmed by the Board's review.

Claim features in dispute

- 2.2 The issue in dispute in this appeal is the novelty of features 1.6, 1.8 and 1.8a over D14; the opposition division's finding of lack of novelty for features 1.1 to 1.5 and 1.7 has not been challenged.

Interpretation of features 1.8 and 1.8a

- 2.3 Given that the interpretation of features 1.8 and 1.8a constitutes a crucial and contentious aspect of the opposition division's novelty assessment, the Board considers it expedient to address this issue first.

Taken together, these features state that the electronic circuitry is configured to:

"determine an adverse condition when a ratio between the measured initial electrical resistance of the heater and a change in electrical resistance from the measured initial resistance is greater than a maximum threshold value [stored in the memory]".

- 2.4 The opposition division interpreted the features in light of paragraph [17] of the patent which reads:

*"The electric circuitry may not actually calculate the ratio or the change in electric resistance and compare the ratio with a threshold value, but may make an equivalent comparison ... For example, the electric circuitry may **compare a measured electrical resistance of the heater element ... with a value calculated from the initial electrical resistance and a threshold value stored in memory.**"*

(emphasis added by the Board).

Accordingly, the opposition division considered claim 1 not to be limited to a comparison between a resistance ratio and a threshold value (hereinafter "**ratio-based comparison**"), which is immediately apparent from the the claim, but also to encompass an equivalent comparison between a measured resistance and a resistance threshold derived from the initial resistance and a stored threshold value (hereinafter "**direct comparison**"), see decision, point 11.2.2.

- 2.5 The opponent submitted that this interpretation was also supported by paragraphs [126] and [128] of the patent. Paragraph [126] discloses the ratio-based comparison between $(R - R_0)/R_0$ and the factor $K = \alpha(T_{\max} - T_0)$, whereas paragraph [128] explains that the equivalent direct comparison may be carried out by comparing the measured resistance R with a maximum resistance given by $R_0(K + 1)$. Here, R_0 denotes the initial resistance of the heater at the room temperature T_0 , R its measured resistance at a higher temperature T , $T_{\max}$ a maximum temperature not to be exceeded, and α the temperature coefficient of resistance of the heater. These symbols are used hereinafter.

Furthermore, the opponent argued that it was apparent from the application as filed that the claim, which had not been substantially amended during examination, was from the outset intended to cover both comparisons.

- 2.6 The proprietor argued that the wording of claim 1 was clear: a ratio in the form $(R - R_0)/R_0$ was to be calculated and compared with a threshold stored in memory. Any alternative comparisons mentioned in the description, in particular the direct one in paragraph [17], were outside the claim's scope. Furthermore,

since the claim clearly defined the ratio-based comparison, no interpretation was required and there was no justification for referring to the description at all.

- 2.7 The opponent and proprietor cited case law in support of their respective positions on whether the claim should, or should not, be interpreted in light of the description when assessing novelty. These decisions were, however, issued before decision G 1/24, in which the Enlarged Board held that *"The description and drawings shall always be consulted to interpret the claims when assessing the patentability of an invention under Articles 52 to 57 EPC"*, see Headnote.
- 2.8 The Board agrees with the opposition division that features 1.8 and 1.8a cover both the ratio-based comparison and the direct comparison, see decision, points 11.2.2 and 11.2.3.

Contrary to the proprietor's view, these features do not define specific mathematical operations to be carried out; they merely specify the condition under which the adverse condition is to be detected, namely *"when a ratio between the measured initial electrical resistance of the heater and a change in electrical resistance from the measured initial resistance is greater than a maximum threshold value ... stored in the memory"*. As long as that condition is detected, the claim leaves open how the detection is achieved mathematically and therefore encompasses any mathematical method of doing so. A recourse to the description, as required by G 1/24, confirms that one envisaged way of detecting this condition is the direct comparison described in paragraphs [17] and [128], the other being the ratio-based comparison disclosed in

paragraph [126].

Explanatory use of the description

- 2.9 For the avoidance of doubt, the Board notes that the present case differs from situations such as that in decision T 439/22 (reasons, points 2.4, 3.4 and 6), in which the description and drawings were relied upon to broaden the scope of a claim beyond what was conveyed by the claim wording read in isolation.
- 2.10 Here, by contrast, the description served an explanatory and confirmatory function by assisting the skilled reader in recognising an embodiment already encompassed by the claim wording, without altering the scope of the claim. More specifically, it explains that features 1.8 and 1.8a cover not only the ratio-based comparison, readily apparent from the claim wording, but also the much less apparent direct comparison. It is reasonable to assume that, without consulting the description, reaching the latter conclusion would, at the very least, not have been straightforward.

This modest explanatory and confirmatory use of the description is consistent with the principles set out in G 1/24 (see T 2027/23 - *Turnable ladder/IVECO*, reasons, point 3.5.2).

Disclosure of D14

- 2.11 The opposition division considered that features 1.6, 1.8 and 1.8a - the latter two interpreted as relating to the direct comparison - were not novel over the embodiment of D14 described in paragraphs [29] to [31]. Like the invention, this embodiment relates to an electronically heated smoking system ("an electronic

cigarette", [21]) which detects an adverse heating condition based on measurements of the resistance of a heating coil corresponding to the heating element in claim 1.

More specifically, paragraph [29] explains that the heating coil may be made of a metal having an initial resistance at room temperature. When electric power is applied during smoking, the coil's temperature increases, causing its resistance to rise according to the formula

$$R(T) = R_0[1 + \alpha(T - T_0)]$$

(hereinafter "Formula (1)").

Paragraph [30] adds that the e-cigarette stops supplying power from the battery to the heating coil when its resistance R exceeds a maximum resistance.

This paragraph further describes that the coil's resistance is measured during the smoking action using Ohm's law based on the voltage drop and the current flowing. It concludes with the sentence that, according to Formula (1), *"The controller may calculate the resistance of the heating coil 620 **also** at room temperature and then **calculate** the actual heating coil 620 temperature"* (emphasis added by the Board).

Novelty of feature 1.6

- 2.12 The Board agrees with the opposition division that the closing sentence of paragraph [30] in D14 discloses that the electrical resistance of the heater is measured using Ohm's law not only during the smoking action but also at room temperature.

The proprietor's reading of this sentence as merely indicating the possibility of calculating R_0 using Formula (1) is unconvincing, since this formula is not usable for this purpose - if T equals T_0 , the formula merely yields $R(T)=R_0$. The formula is only suitable for calculating $R(T)$ for $(T>T_0)$, once R_0 is known.

Novelty of features 1.8 and 1.8a

- 2.13 In order to take away the novelty of features 1.8 and 1.8a, when interpreted as relating to the direct comparison in paragraph [17] of the patent, the prior art (in this case D14) would need to disclose that the measured resistance of the heating element is compared with a maximum resistance threshold obtained from the measured value of R_0 and a pre-stored threshold.

The opposition division found that D14 disclosed this. More specifically, the division read D14 as meaning that the maximum resistance mentioned in paragraph [30] was calculated by substituting the measured value of R_0 and the product $\alpha(T_{\max} - T_0)$ into Formula (1), see decision, points 11 and 11.2.2. Read in this way, D14 disclosed the direct comparison. The opponent agreed with that interpretation and additionally argued that D14 disclosed no other way of determining R_0 than by measuring it.

- 2.14 The proprietor argued that D14 did not disclose that the maximum resistance to be compared with the measured resistance was calculated based on the measured value of R_0 , but rather that the maximum resistance was a predefined constant.

- 2.15 The Board agrees with the proprietor that D14 neither discloses nor implies that Formula (1) is used to calculate the maximum resistance, let alone that the measured value of R_0 is substituted into it for this purpose. The latter conclusion is bolstered by the fact that the closing sentence of paragraph [30] appears to suggest that R_0 is measured in order to "*calculate the actual heating coil 620 temperature*", rather than to determine the maximum resistance referred to earlier in paragraphs [29] and [30].

However, the Board is not convinced by the proprietor's assertion that D14 implies that the maximum resistance is a predefined constant - this is not disclosed either.

In the Board's view, D14 simply leaves open how the maximum resistance referred to in paragraph [30] is determined.

- 2.16 Summing up, although D14 discloses that R_0 is measured, it does not disclose that the maximum resistance compared with the measured resistance is obtained from this measured value of R_0 . Accordingly, the Board considers that, contrary to the opposition division's finding, claim 1, interpreted as relating to the direct comparison, differs from D14 in that:

U1) The maximum resistance, used for comparison with the measured resistance, is obtained from the measured value of R_0 and a threshold value stored in memory.

Inventive step over D14

3. The Board agrees with the opponent and judges that the subject-matter of claim 1 lacks an inventive step in

view of D14 (Articles 56 and 100(a) EPC).

Examining inventive step on appeal - no remittal

- 3.1 Inventive step in respect of the main request starting from D14 had not been addressed in the decision under appeal. However, both parties presented arguments on this issue, both in writing and during the oral proceedings before the Board.

The Board notes that D14 was thoroughly discussed in connection with the novelty objection, and the inventive-step attack based on it essentially remains within the factual framework of this discussion. As the Board was able to decide this issue on the basis of the parties' submissions without undue burden, it saw no reason to remit the case to the opposition division (Article 11 RPBA).

Problem and solution approach

- 3.2 The Board agrees with the opponent that, starting from D14, the objective technical problem, in view of feature U1, is how to determine the maximum resistance value that corresponds to the maximum permissible temperature $T_{\max}$ for a particular heating element (heating coil in D14), while taking into account manufacturing variations between different heating elements.

The Board further agrees with the opponent that the skilled person would have been aware from their common general knowledge that the resistances of different heating elements vary due to manufacturing tolerances. Accordingly, they would have sought to determine the maximum resistance value in a manner accounting for

such variations, even without any specific hint in the prior art.

3.3 The Board is persuaded by the opponent's reasoning that the skilled person would have arrived at the claimed solution on the basis of D14 itself. In particular, D14 teaches measuring R_0 , which accurately reflects the resistance of the particular heating element at room temperature, and provides Formula (1) defining the relationship between temperature T and resistance $R(T)$ using R_0 . The skilled person would therefore have recognised, without the exercise of inventive skill, that using the measured value of R_0 in Formula (1) allows the maximum resistance corresponding to $T_{\max}$ to be accurately determined for the particular heating element.

3.4 At the oral proceedings, the proprietor referred to the sentence in paragraph [29] of D14 stating that *"If the cartridge is filled up with e-liquid 212, then the heating coil 216 temperature may have the maximum temperature at the boiling point of the e-liquid 212"*. According to the proprietor, this implied that the temperature at which the power supply to the heating coil was stopped corresponded to the boiling point of the e-liquid surrounding the heating coil. Since, as disclosed in paragraph [23], different e-liquids were used, each having its own boiling point, $T_{\max}$ varied from one e-liquid to another.

The proprietor argued that, in view of this, preventing burning would require determining the boiling point of a particular e-liquid used. This could only be achieved by directly measuring the temperature of that e-liquid and stopping the power supply when the e-liquid's boiling point was reached, rather than by measuring the

resistance of the heating coil. If resistance measurements were nevertheless used for this purpose, the maximum resistance would simply be a value mapped from the boiling-point temperature, for example by means of a lookup table, thereby eliminating any need to use R_0 .

- 3.5 The opponent argued that the proprietor's assumption that $T_{\max}$ corresponded to the boiling point of the e-liquid was incorrect. This was apparent from paragraph [29], which, when read in its entirety, disclosed that, the burning-prevention method described in this paragraph and paragraph [30] addressed the situation in which the e-liquid had already evaporated and the temperature of the heating coil exceeded the boiling point. Consequently, it followed from paragraph [29] that $T_{\max}$ had to be set at a temperature above the boiling point of the e-liquid.
- 3.6 Like the opponent, the Board is not convinced by the proprietor's reasoning.

Firstly, the Board agrees with the opponent's interpretation of paragraph [29] and additionally notes that, if $T_{\max}$ were set at the boiling point of the e-liquid, as argued by the proprietor, the e-liquid could not evaporate and aerosol generation would not be possible under normal operating conditions. Thus, contrary to the proprietor's view, the Board agrees with the opponent that $T_{\max}$ must be set at a temperature above the boiling point of the e-liquid. The proprietor's arguments based on the alleged necessity of measuring the e-liquid temperature or deriving the maximum resistance from the e-liquid's boiling-point temperature are therefore not persuasive.

Secondly, the proprietor's argument overlooks that the starting point for the inventive-step assessment is D14's embodiment of paragraphs [29] and [30], in which neither temperature measurements nor temperature comparisons are performed. Instead, the resistance of the heating coil is measured repeatedly and compared with the maximum resistance corresponding to a preselected maximum temperature Tmax. These design choices are fixed features of the starting point and therefore form part of the framework within which the objective technical problem is formulated.

Accordingly, the skilled person's task is confined to determining the maximum resistance value that accurately corresponds to the given Tmax for the particular heating element. Questions such as how that Tmax was determined, whether it reflects differences between the boiling points of different e-liquids, or whether a control strategy based on temperature measurements would altogether be preferable fall outside the scope of that task and are therefore irrelevant to the assessment of inventive step.

First auxiliary request

Inventive step over D14 and D4

4. The Board agrees with the opposition division and judges that claim 1 of the first auxiliary request involves an inventive step over D14 combined with D4.
- 4.1 This claim removes features 1.8a and 1.8b, leaving only feature 1.8c. The opponent does not take issue with the opposition division's finding (decision, point 13.1.2) that D14 does not disclose this feature. Neither does

the Board.

- 4.2 Accordingly, claim 1 differs from D14 by features U1 and 1.8c.
- 4.3 It is common ground between the opposition division and the opponent that the technical problem solved by feature 1.8c is how to adapt the device of D14 to provide an alternative criterion for determining an adverse condition, see decision, point 13.1.3.
- 4.4 The Board notes that both the opposition division and the proprietor argued that the skilled person would not have combined D14 with D4. However, the Board need not take a position on this issue, since it agrees with the opposition division that, even if such a combination were considered, it would not have led to the claimed invention.
- 4.5 It is common ground between the opposition division and the opponent that, if the skilled person, faced with the above problem, did combine D14 and D4, they would consider paragraph [72] which states that "*a measure of the heating element temperature, or **rate of change of temperature**, or an integral of temperature over time, can all provide a sufficiently accurate measure of when the amount of liquid storage portion has decreased to a threshold*" (emphasis added by the Board). It is also not disputed that, according to paragraph [0067] of D4, the rate of change of temperature is defined as the change in temperature divided by a time interval.

The point of contention is how far the skilled person would have modified D14 in view of this teaching.

- 4.6 The opposition division argued that the skilled person would at most have modified the system of D14 to monitor the rate of change. While this is not stated explicitly in the decision, the Board understands this to refer to monitoring the rate of change of the heating element's resistance. The opposition division concluded that such a modification would not be equivalent to determining whether the resistance ratio reaches a threshold value outside of an expected time period, as required by feature 1.8c, see decision, point 13.3.
- 4.7 The opponent argued that, when applying the teaching of D4 to D14, the skilled person would have recognised that the rate of change of the heating element's resistance could be monitored instead of the rate of change of the heating element's temperature. It would also have been apparent to the skilled person that a rate-of-resistance-change threshold could be exceeded either because the measured resistance surpassed the maximum resistance within an expected period of time or because the resistance changed by a given amount in less than that period. Since the system of D14 already measured the resistance of the heating element and compared it with the maximum resistance, the skilled person would have determined the rate of resistance change by measuring the time taken for the heater's resistance to reach that maximum resistance and would have compared this time with a predetermined threshold. In the opponent's view, arriving at this realisation did not involve an inventive step.
- 4.8 The Board is not convinced by the opponent's argument. As the opposition division correctly found, the skilled person, when combining D14 with D4, would merely have replaced the direct comparison of resistance values

with an evaluation of the rate of change of resistance, obtained by dividing the difference between two successive resistance measurements by the time elapsed between those measurements. In the Board's view, the skilled person would have had no reason, other than hindsight, to extend this obvious solution by introducing the notion of expected time period, storing its duration in memory, and determining whether the measured resistance reaches the maximum resistance outside of that time period.

Inventive step over D2 and D4

5. The Board judges that claim 1 also involves an inventive step over the combination of D2 and D4.
- 5.1 This inventive-step attack was not addressed in the decision under appeal. However, it was discussed during the opposition proceedings and formed part of the opponent's statement of grounds of appeal. Similarly to the inventive-step attack based on the combination of D14 and D4, the Board was able to decide this issue without undue burden, in particular because the opponent's submissions largely mirrored those made in relation to the combination of D14 and D4.
- 5.2 D2 discloses an e-cigarette in which the power supplied to the heating element is stopped when its temperature exceeds a maximum threshold, see page 18. The temperature of the heating element is determined from its resistance using a formula derived from Formula (1), see page 14. The opponent argued that, by determining the heating element's temperature from its resistance and comparing this temperature with the maximum threshold, D2 implicitly performed the direct

comparison within the meaning of the patent.

5.3 Thus, leaving aside the fact that D2 does not disclose measuring R_0 and accepting, for the sake of argument, the opponent's reading of this document, the disclosure of D2 corresponds, at best, to that of D14. The opponent proceeded on precisely that assumption and argued that feature 1.8c was obvious for essentially the same reasons as those advanced in respect of the combination of D14 and D4.

5.4 Accordingly, for the same reasons as those set out above, the Board is not convinced by these arguments and concludes that claim 1 involves an inventive step over the combination of D2 and D4.

Other independent claims

6. No separate objection regarding inventive step was raised against independent claims 6 to 9 and 11 to 12. Since these claims correspond to claim 1, the Board considers that they likewise involve an inventive step for the same reasons.

First auxiliary request - conclusion

7. Since the opponent's inventive step attacks against the first auxiliary request failed and the opponent had no other objections against this auxiliary request, their appeal has to be dismissed and the decision of the opposition division has to be upheld.

Order

For these reasons it is decided that:

The opponent's appeal is dismissed.

The Registrar:

The Chairwoman:



T. Buschek

I. Kürten

Decision electronically authenticated