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Datasheet for the decision of 24 February 2026

Case Number: T 0159/24 - 3.3.05

Application Number: 19185216.9

Publication Number: 3594317

IPC: C11B1/16, C11B3/12, C11B13/00

Language of the proceedings: EN

Title of invention:
FRACTIONATION OF BIOMASS-BASED MATERIAL

Patent Proprietor:
Neste Oyj

Opponent:
UPM-Kymmene Corporation

Headword:
Fractionation of Biomass-based material/Neste

Relevant legal provisions:
EPC Art. 54(2), 56, 83

Keyword:
Novelty - (yes)
Inventive step - (yes)
Sufficiency of disclosure - (yes)

Decisions cited:
T 1051/09

Catchword:

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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 0159/24 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 24 February 2026

Appellant: (Opponent)	UPM-Kymmene Corporation Alvar Aallon katu 1 00100 Helsinki (FI)
Representative:	Boco IP Oy Ab Kansakoulukatu 3 00100 Helsinki (FI)
Respondent: (Patent Proprietor)	Neste Oyj Keilaranta 21 02150 Espoo (FI)
Representative:	Kolster Oy Ab (Salmisaarenaukio 1) P.O. Box 204 00181 Helsinki (FI)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 30 November 2023 rejecting the opposition filed against European patent No. 3594317 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chair	R. Winkelhofer
Members:	R. Elsässer
	G. Glod

Summary of Facts and Submissions

I. The opponent's appeal is directed against the opposition division's decision to reject the opposition.

The opposition division came to the conclusion that, *inter alia*,

- the invention was sufficiently disclosed;
- the claimed subject-matter was novel over **D1** (WO 2012/069704 A1), **D2** (FI20155542 A) and **D3** (WO2012069706 A2);
- the claimed subject-matter involved an inventive step over **D4** (RIISTAMA, Kyösti et al., "Suomen kemianteollisuus" Chemas Oy, 2005), when combined with D1 or D3, and over **D8** (WO2009125072 A1), when combined with D3 or **D9** (WO2011117474 A1);
- **D5** (DREW, John et al., "Tall oil" Pulp Chemicals Association New York, 1981) and **D6** (NORLIN, Lars-Hugo, "Tall Oil - Ullmann's Encyclopedia of Industrial Chemistry", Wiley-VCH Verlag GmbH & Co. KGaA, 2012) were found to be less promising starting points; and
- **D13** (FI20185493 A) was disregarded since no translation into an official language had been provided.

II. Independent claims 1, 19 and 22 as granted, with the feature grouping used in the decision, read as follows:

Claim 1:
F1 *A process for fractionating biomass-based material, wherein the process comprises*
F2 *evaporating an evaporable part of biomass-based material in a short path evaporator, SPE, to produce a*

depitched lights fraction in liquid form, and a heavier pitch fraction, wherein the process comprises
F3 *evaporating biomass-based material (101) in a thin film evaporator, TFE (102), to produce a TFE overhead vapour fraction (103) containing at least organic acids and neutral organic components, and a TFE residue fraction (104);*
F4 *wherein said depitched lights fraction (106) in liquid form, and said heavier pitch fraction (107) are obtained by evaporating said TFE residue fraction (104) in said SPE (105);*
F5 *distilling, in a distillation column (108), the TFE overhead vapour fraction (103), and the depitched lights fraction (106) in liquid form,*
F6 *to produce a lighter organic acid and neutral organic components fraction (109), a first heavier organic acid and neutral organic components fraction (110, 131) in liquid form, and a second heavier organic acid and neutral organic components fraction (131) in gaseous form.*

Claim 19:
F21 *A fractionation apparatus, wherein the apparatus comprises*
F22 *a thin film evaporator, TFE (102), configured to evaporate biomass-based material, to produce a TFE overhead vapour fraction (103) containing at least rosin acid and fatty acid, and a TFE residue fraction (104);*
F23 *a short path evaporator, SPE (105), configured to evaporate the TFE residue fraction (104) to produce a depitched lights fraction (106) in liquid form, and a heavier pitch fraction (107);*
F24 *a distillation column (108) configured to distillate the produced TFE overhead vapour fraction (103), and the depitched lights fraction (106) in*

liquid form comprising a depitched tall oil fraction (106) in liquid form, to produce a crude fatty acid, CFA, fraction (109), a first rosin fraction (110, 131) in liquid form, and a second rosin fraction (131) in gaseous form; and
F25 *means for recovering said heavier pitch fraction (107), CFA fraction (109) and rosin fractions (110, 131).*

Claim 22:
F31 *Use of at least one short path evaporator (SPE, 105) in series or in parallel with at least one thin film evaporator TFE (102) for depitching biomass-based material, wherein SPE (105) is located after TFE (102), by*
F32 *evaporating an evaporable part of biomass-based material in a short path evaporator, SPE, to produce a depitched lights fraction in liquid form, and a heavier pitch fraction;*
F33 *evaporating biomass-based material (101) in a thin film evaporator, TFE (102), to produce a TFE overhead vapour fraction (103) containing at least organic acids and neutral organic components, and a TFE residue fraction (104);*
F34 *wherein said depitched lights fraction (106) in liquid form, and said heavier pitch fraction (107) are obtained by evaporating said TFE residue fraction (104) in said SPE (105);*
F35 *distilling, in a distillation column (108), the TFE overhead vapour fraction (103), and the depitched lights fraction (106) in liquid form, to produce a lighter organic acid and neutral organic components fraction (109), a first heavier organic acid and neutral organic components fraction (110, 131) in liquid form, and a second heavier organic acid and neutral organic components fraction (131) in gaseous*

form.

III. To further support their case, over the course of the appeal proceedings the appellant filed **D4a**, which is a partial translation of document **D4** into English, and a copy of a decision of the Finnish Market Court **D14** and its translation into English **D14a**.

IV. The proprietor and respondent, in turn, filed 12 auxiliary requests over the course of the appeal proceedings.

V. The objections raised by the appellant can be summarised as follows:

- The invention, in particular the invention defined in claims 6 and 22 as granted, was not sufficiently disclosed.
- The subject-matter of claims 1 and 22 lacked novelty over D1 and D3.
- The subject-matter of claim 19 lacked novelty over D2.
- The subject-matter of claims 1 and 22 lacked an inventive step over the common general knowledge demonstrated in D4, when combined with D1, D3 or D10, or over the common general knowledge demonstrated in D5, when combined with D3, or over the common general knowledge demonstrated in D6 when combined with D1, or over D8, when combined with D3 or D9.
- The subject-matter of claim 19 lacked an inventive step over D2, when combined with D3, or for the same reasons as claim 1.

VI. The respondent refuted the objections.

VII. On substance, the appellant requests that the decision under appeal be set aside and amended such that the patent be revoked.

The respondent requests that the appeal be dismissed (main request) or that the patent be maintained on the basis of auxiliary requests 1 to 12.

Reasons for the Decision

1. Sufficiency of disclosure

In its communication pursuant to Article 15(1) RPBA, the board had set out its preliminary opinion as to why it found the invention to be sufficiently disclosed. Since the appellant did not contest this finding, and in the absence of other reasons for the board to depart from the preliminary opinion, this opinion is reproduced in the following (points 1.1 and 1.2) so as to remain essentially unchanged:

1.1 The appellant raised two objections in this context. The first objection concerns claim 6 as granted, which specifies that one fraction obtained by the process in claim 1 contains between 3 and 8 wt.% of rosin acid. The appellant argued that this could only be achieved if a raw material was used that already contained rosin acid. Since claim 1 was not restricted to such a material, the invention as defined in the claim could not be carried out over its entire claimed scope.

1.1.1 These arguments are not convincing. The broadest embodiment of the process of the invention is defined in claim 1. Consequently, this claim is not limited to any specific starting material. Claim 6, on the other hand, defines a specific embodiment of the invention,

namely a process in which one of the fractions contains a certain amount of rosin acid. For this claim to be reproducible, it is sufficient for the skilled person, based on the teaching of the patent and/or common general knowledge, to be able to identify process conditions and/or raw materials which make it possible to obtain a fraction as defined in claim 6.

1.1.2 In this context, it appears undisputed that raw materials which contain considerable amounts of rosin acid, such as crude tall oil, are readily available (see e.g. paragraph [0078] of the patent), and no evidence has been submitted that the invention as defined in claim 6 as granted could not be put into practice when using such raw materials or similar raw materials.

1.1.3 The appellant cited decision T 1051/09, in which it was concluded that, if a claimed process is defined in a functional manner, i.e. by its outcome, the patent must contain generalisable teaching that allows the skilled person to also put the invention into practice beyond the specific examples, within the scope of the claims.

1.1.4 However, this case is not comparable to the current one. Underlying that decision was a process of treating a resin comprising azetidinium ions and aminohalohydrin groups whereby the treated resin was characterised by a number of parameters, namely a conversion rate of said aminohalohydrin of at least 90%, a substantially unchanged level of azetidinium ions and an effectiveness of imparting wet strength to paper treated with the resin that was at least as great as the effectiveness of the untreated resin. In that particular case, the decision concluded that the skilled person was not provided with general teaching

that would make it possible to obtain treated resins having the set of properties defined in the claim in combination, beyond the examples provided; see point 2.7 of the Reasons.

1.1.5 In contrast, claim 1 in hand relates in essence to a multi-step evaporation and distillation process. The skilled person knows that, in such a process, the type of product obtained depends on the type of raw material fed into the process. While degradation of components might occur during the distillation process (see below), the skilled person knows that a rosin containing raw material must be fed into the process in order to obtain a fraction as defined in claim 6 as granted. The skilled person is thus able to carry out the invention when taking into account the whole disclosure and common general knowledge.

1.1.6 This is the crucial difference from T 1051/09, in which, with the exception of the examples provided, neither the teaching of the patent nor common general knowledge allowed the skilled person to obtain products having the claimed combination of features. It is also important to note that decision T 1051/09 does not support the appellant's allegation that, for the invention in claim 6 to be sufficiently disclosed, it had to be possible to obtain a rosin fraction for all claimed starting materials (see the grounds of appeal on page 4 and page 5, third paragraph from the bottom). Instead, in that case, the board held that the skilled person must be able to select, from the host of available process adjustments and starting materials, those conditions which make it possible to obtain treated resins having the properties defined in the claim, also beyond the examples disclosed in the patent. For the reasons set out above, this condition

is met in the case in hand.

1.2 The appellant's second objection concerns feature F31 of claim 22, in which the appellant objected to a perceived contradiction between the statement that the SPE must be located after the TFE and the fact that feature F31 allows for an in-parallel arrangement of the TFE and SPE units.

1.2.1 This objection is not convincing either. The claim is unambiguous in its definition of an "in-series" arrangement of an SPE and and TFE; see feature F31 ("located after") and features F33 and F34 ("evaporating said TFE residue fraction in said SPE"). Therefore, the skilled reader would realise that, for the embodiment of a use employing exactly one SPE and one TFE, the "in parallel" option is not available. In addition, it has not been contested that, in a configuration employing more than one TFE and SPE unit, the claimed "in parallel" configuration could be achieved without contradicting the other features of the claim.

1.3 It follows that the invention is sufficiently disclosed.

2. Main request - novelty of claims 1, 19 and 22

In the communication pursuant to Article 15(1) RPBA, the board had also set out its preliminary opinion as to why it found the claimed subject-matter to be novel. Since the appellant did not contest this finding either, and in the absence of any other reasons for the board to depart from the preliminary opinion, this opinion is likewise reproduced in the following (2.1

and 2.2) so as to remain essentially unchanged:

2.1 The subject-matter of claims 1 and 22 is novel over D1 and D3.

2.1.1 As correctly argued by the respondent, D1 fails to disclose at least features F5 and F6 (claim 1) and F35 (claim 22).

2.1.2 In figure 2 and the corresponding passages of the description of D1, a process is disclosed in which biomass-based material is fed into a distillation unit, which is preferably a TFE (16), to produce an overhead fraction that is withdrawn through the connection 19' and a TFE residue fraction which is fed through the connection 19 into a second distillation unit which is preferably an SPE 20. The SPE 20 produces a heavier pitch residue, which is withdrawn at the outlet 22, and a depitched lights fraction, which is withdrawn at the product outlet 18. The distillates obtained from both distillation units 16 and 20 are combined and further processed in the unit C2.

Therefore, it might be assumed in the appellant's favour that D1 discloses a process having features F1-F4.

2.1.3 However, the unit C2 is not a distillation column, but a unit in which the product streams are catalytically hydroprocessed (D1, page 11, line 9). This reflects the general teaching on page 1, lines 5 and 9, according to which the evaporated material is fed into a hydroconversion process in order to obtain biofuels. The appellant has relied on the passage on page 1, lines 14 to 16; however, this passage relates to the prior art and not to the invention. Moreover, it

confirms that the product stream is first catalytically hydrotreated and then distilled. There is in fact no passage in D1 which discloses that the volatile fractions of the units 16 and 20 are fed into a distillation column, as claimed.

2.1.4 The appellant has further pointed out that the claim did not exclude further process steps, and so it covered a process in which the final distillation step in the column was preceded by a hydrotreatment step.

This argument is not convincing either since the claim explicitly requires that "the TFE overhead fraction" and "the depitched lights fraction" be distilled in the distillation column. This formulation does not include the process steps disclosed in D1 in which these two fractions are first hydrotreated to yield a hydrotreated material which is then distilled, because the composition of the hydrotreated material will be materially very different from the two fractions fed into the hydrotreatment unit.

Therefore, D1 might arguably disclose that a material *derived from* the overhead vapour fraction and the depitched lights fraction is distilled, but this is not the same as distilling the actual fractions.

2.1.5 In this context, the appellant argued that, according to claim 4 as granted, the material to be distilled could be subjected to a phase separation step so that claim 1 did not exclude intermediate steps, such as a hydroconversion step.

This argument is not persuasive either. Claim 1 requires that the TFE overhead vapour fraction be distilled in the distillation column. This does not

exclude an intermediate phase separation step in which liquid droplets entrained in the vapour stream are removed, since the resulting, purified vapour fraction is still essentially the same. Therefore, there is no contradiction between claims 1 and 4 as granted.

Such a phase separation step is not comparable to an intermediate hydrotreatment step which would completely alter the chemical composition of the vapour fraction, which is the purpose of a hydrotreatment.

For these reasons, the step of distilling a hydrotreated material obtained from the overhead vapour fraction is not identical to the claimed step of distilling the overhead vapour fraction itself.

2.1.6 Moreover, feature F6 in claim 1 requires that the final distillation yields three fractions which are at least partly defined by their compositions and aggregate states. Even if the appellant's argument was to be followed, the document does not disclose that the fractions obtained from the distillation have the properties mentioned in feature F6.

The appellant's corresponding argument that it had to be assumed that the products obtained by the process were identical since the starting materials were also identical is not convincing since the process in D1 includes the hydrotreatment step, which changes the composition of the products fed into the distillation column; see above. In particular, it has not been demonstrated that the hydrotreated material in D1 contained organic acids since it is the purpose of the hydrotreatment to remove, *inter alia*, oxygen components, such as organic acids.

In this context, the appellant argued that hydroconversion was never 100% effective, meaning that some acids would inevitably remain in the distillate, even after hydrogenation; however, this assumption is merely speculative and is not supported by any evidence. At the very least, it falls short of establishing that D1 directly and unambiguously discloses feature F6.

2.1.7 For at least the same reasons, D3 is not novelty-destroying for claim 1. Like D1, D3 discloses a process in which biomass-based material is first evaporated in an apparatus that can comprise a TFE and an SPE unit arranged in series; however, D3 also teaches feeding the obtained distillate fractions into a hydrotreatment unit first, followed by feeding the hydrotreated material into a further distillation unit (see, for example, claim 1). Therefore, D3 fails to disclose at least steps F5, F6 and F35.

2.1.8 For essentially the same reasons, D1 and D3 fail to disclose the corresponding feature F35 in claim 22, meaning that this claim is also novel.

2.2 The subject-matter of claim 19 is novel over D2.

2.2.1 As correctly argued by the respondent, the passages of D2 cited by the appellant do not disclose an apparatus in which a TFE and an SPE unit are arranged in series, as claimed. Instead, D2 teaches that both the first and the second unit can be selected from a list of several possible units (page 3, lines 3 to 32). While example I discloses an apparatus having a TFE and an SPE unit arranged in series, as claimed, this apparatus is not coupled to a distillation column.

2.2.2 Moreover, the reasoning set out with regard to claim 1 also applies to claim 19. The claim requires that the distillation is configured to receive the liquid distillate of the SPE unit and the overhead vapour fraction of the TFE unit, while according to claim 1 of D2, the distillation column (fractionation unit) is only arranged after a hydroprocessing reactor. This column is therefore not configured to receive the two fractions as claimed. Instead, it is configured to receive hydrotreated material only.

2.3 It follows that the claimed subject-matter is novel (Article 54(2) EPC).

3. Inventive step - main request

In the communication pursuant to Article 15(1) RPBA, the board had also set out its preliminary opinion as to why it found the claimed subject-matter to involve an inventive step over the various documents and combination of documents cited by the appellant. They contested the board's preliminary opinion only as far as the objection starting from D4 and taking into account D1 was concerned; however, the appellant's (counter-)arguments are not convincing, as set out below.

3.1 Figure 7.7 and the corresponding translated text (D4a) of D4 disclose a method of fractionating tall oil, and in accordance with the parties' shared view, the document (the common general knowledge evidenced by it) represents a suitable starting point for the assessment of inventive step.

3.2 The appellant supplemented the disclosure of D4/D4a with other sources, in particular D5 and D6, as further

evidence of common general knowledge. Based on this approach, the appellant argued that the only feature of claim 1 that was not part of the common general knowledge was a method of having an SPE as the second evaporator in the depitching section.

3.3 Even when proceeding from the appellant's premise that the absence of an SPE is the sole material difference between the claimed method and the method disclosed in D4, this translates into three distinguishing features, namely F2, F4 and F5. This is immediately evident for features F2 and F4, which directly mention the SPE, while feature F5 mentions the depitched lights fraction in liquid form. Since this fraction is produced in the SPE (F2) which is missing in D4, this document does not disclose feature F5 either. D5 and D6 do not change this assessment since neither document discloses an SPE.

3.4 According to paragraph [0081] of the patent, the claimed process leads to better yields for fatty acid and rosin acid. Accordingly, the opposition division based its reasoning on the same effect and formulated the problem as that of providing a process having an improved yield of rosin and fatty acid.

3.4.1 Both parties agreed to this formulation before the opposition division; see point 18.6.4 of the impugned decision and also the submission of 8 September 2023, in which the appellant explicitly formulated the problem as providing "*a process for improving fractionation of a biomass-based material by increasing the yields for fatty acid and rosin acid*".

3.4.2 In contrast to this, in their grounds of appeal, the appellant formulated the problem in a different way,

namely as that of providing an improved process by increasing the yield of the depitched product fraction obtained from the evaporation unit.

3.4.3 The respondent, though, insisted on keeping the formulation as agreed upon in the opposition proceedings.

3.4.4 While the two problems are similar, they differ in that the problem on which the decision is based focuses on the yield of the final products, whereas the problem formulated by the appellant focuses on the yield of an intermediate product, namely the depitched but undistilled material.

3.4.5 The new formulation of the problem as submitted by the appellant might constitute an amendment in the sense of Article 12(4) RPBA that was not identified as such by the appellant and for which reasons were not provided for submitting it for the first time in the appeal proceedings.

3.4.6 In any case, though, the problem as formulated by the appellant is not convincing in substance, since it is artificial; in particular, it appears to be formulated with hindsight in such a way that D1 contains a pointer to its solution; see below. The skilled person would not regard the yield of an intermediate product as an object in itself. They might increase the yield of the intermediate product with the expectation of thereby increasing the yield of the final product, but the underlying problem is also then still that of providing a method that gives better yields of final product, namely fatty acid and rosin acid in the case in hand.

In view of these considerations, the problem to be

solved is that of providing an improved method having a higher yield of fatty acids and rosin acid, as correctly held in the contested decision.

3.5 As a solution to this problem, the patent proposes the method according to claim 1, *inter alia* having a depitching unit with (at least) one TFE and one SPE unit arranged in series, as claimed, namely a method including features F2, F4 and F5.

This solution is not obvious.

3.5.1 The appellant argued to the contrary that the skilled person would consult D1 and thus inevitably arrive at the claimed solution; however, in view of the problem to be solved, namely that of providing a process that gives higher yields of fatty acids and rosin acid, there is no reason to conclude that the skilled person would consult this document, as it relates to the production of hydrotreated biofuels and not to the production of fatty acids or rosin acids.

The appellant argued that the patent also mentioned the production of renewable fuels, but this is irrelevant, since the primary goal is to increase the yields of fatty acids and rosin acid.

More importantly, the starting document, D4a, which sets the framework for the inventive-step attack, explicitly discloses that fatty acids obtained from distilling tall oil are used in the paint and adhesive industry, while rosin acid is used in the paper industry. In contrast, hydrotreating the materials for use in biofuels is not disclosed in this document, and therefore there is no reason for the skilled person to consult D1.

3.5.2 Even when taking into account the teaching of D1, the skilled person would not have arrived at the claimed solution.

The appellant pointed out that, in a distillation process, the input and the output were basically the same, and so any fatty acid present in the starting material, namely the crude tall oil, would either be part of the pitch or of the depitched distillate. Since the method in D1 was designed to reduce the amount of the pitch fraction and to increase the amount of the depitched fraction, the skilled person would have realised that by applying the depitching section in D1 to the process in D4, the yield of rosin acid and fatty acid would have increased.

3.5.3 However, this view is not supported by the actual disclosure of D1. Instead, it is disclosed on page 4, lines 1 to 7 that the method is controlled in such a way that as many as possible of the neutral components of the tall oil material, which otherwise would end up in the pitch, are withdrawn with the recovered fractions for further utilisation. In contrast, an increased yield of fatty acids and rosin acids is not mentioned.

3.5.4 In this context, the appellant also argued that distillation was only selective with regard to the boiling point of the materials, but not with regard to their chemical structure, meaning that it was not possible to increase the yield of neutral materials without also increasing the yield of fatty acid and rosin acid.

This argument is likewise not convincing since it fails

to take into account the heat degradation of acids that can occur over the course of the distillation process. This effect is not only described in the patent (table 2 as well as paragraphs [0004] and [0010]), but is also part of the common general knowledge concerning tall oil distillation; see D5, page 93-94 and D6, point 3.2.2, which was also explicitly acknowledged by the appellant. Therefore, the skilled person could not assume that the increased yield of neutral components in the distillate is automatically accompanied by an equally increased yield of fatty acid and rosin acid.

3.5.5 Consequently, the skilled person had no reason to expect that the problem of increasing the yield of fatty acid and rosin acid could be solved by simply replacing the depitching unit disclosed in D4 with the depitching unit disclosed in D1.

3.6 Concerning the remaining inventive-step objections, there is again no reason for the board to deviate from its preliminary opinion, which was not contested by the appellant.

3.6.1 D4 with D3

The reasoning with regard to D1 also applies to the attack using D3 as secondary document, since its disclosure is very similar to that of D1; see e.g. D3, page 8, lines 27-32.

3.6.2 D4 with D10

The attack using D10 as the secondary document fails to convince as well, since this document does not disclose the claimed depitching section having one TFE and one SPE arranged in series, as claimed. Moreover, as

correctly argued by the respondent, simply replacing the last or lowest TFE unit disclosed in D4 with an SPE would not lead the skilled person to the claimed subject-matter either. The connection between the TFE vapour and the rosin column would still be missing.

3.6.3 Attacks starting from D5 or D6 or D8

The attack starting from D8 is correctly addressed in the contested decision. The relevant passages of this document are essentially similar to those of D4 since it discloses a process of tall oil distillation, whereby the depitching section does not comprise an SPE (D8, page 4, line 3 to page 5, line 4).

If combined with D3, the attack fails for the same reasons as set out above in the context of the attack based on D4.

The attack combined with D9 fails as well, since D9 does not disclose an SPE used in depitching tall oil, but in a process in which an SPE is used in working up tall oil pitch (see page 3, line 25 to page 4, line 2). There was thus no reason to replace the depitching equipment disclosed in D8 with the SPE disclosed in D9, which is used for a different process.

D5 and D6 disclose a tall oil distillation process in which an SPE is not used, as in D4 and D8. The opposition division was thus also correct in finding that it had not been demonstrated that these documents are equally valid starting points (point 18.8 of the decision), for the same reasons as set out with regard to the attacks starting from D4 and D8. Moreover, the reasons set out with regard to the teaching of the respective secondary documents D1 and D3 also apply to

these attacks.

3.6.4 Claims 19 and 22 - inventive step

The appellant attacked these claims using the same arguments as those used in the context of the discussion of claim 1. Therefore, the attacks fail for the same reasons.

In addition, the appellant attacked claim 19 starting from D2 with D3 as the secondary document. This argument likewise fails to convince since, for the reasons set out above, neither D2 nor D3 discloses feature F24.

3.7 Decision of the Finnish Market Court D14/English translation D14a

Finally, the appellant drew upon this decision, claiming that the arguments used in it applied equally here.

This is not convincing either. In this decision, the Finnish Market Court had found that the Finnish patent FI 128591, the claims of which corresponded to the claims of the patent in hand, lacked an inventive step when starting from D5 or D6 (same numbering as in the current proceedings) and taking into account the teaching of FI 20185493. The latter corresponded to D13 in the current proceedings, which was disregarded by the opposition division since a translation into an official language had not been filed (see point 17.4 of the contested decision).

The appellant did not contest this part of the decision, nor did they file a translation of D13.

They (only) argued that D13 as dealt with in the decision D14/D14a "corresponded substantially" to document D3, and that the Finnish Market Court had followed the respondent's line of argument as also presented here.

However, that cannot be verified in the absence of a translation.

For that reason alone, D14/D14a cannot be drawn upon, as the Finnish Market Court had taken its decision based on a document that was not part of the current proceedings, and thus concerned a different subject.

In addition, and while national case law in the Contracting States, as well as that of the Unified Patent Court, is regularly consulted with regard to its persuasiveness and comparability, with the aim of a harmonised approach wherever possible, any such decision does not have any binding effect on the boards of appeal in general, and would not have had such an effect in the case in hand either.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

D. Grundner R. Winkelhofer

Decision electronically authenticated