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**Datasheet for the decision
of 11 November 2025**

Case Number: T 0323/24 - 3.3.02

Application Number: 15817339.3

Publication Number: 3240620

IPC: B01D53/22

Language of the proceedings: EN

Title of invention:

PROCESS FOR SEPARATION OF GASES WITH REDUCED MAINTENANCE COSTS

Patent Proprietor:

Evonik Operations GmbH

Opponent:

Air Products and Chemicals, Inc.

Headword:

EVONIK / MEMBRANE GAS SEPARATION

Relevant legal provisions:

EPC Art. 56, 100(a), 100(b)

Keyword:

Grounds for opposition - sufficiency of disclosure (yes) -
inventive step (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0323/24 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 11 November 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
18 January 2024 concerning maintenance of the
European Patent No. 3240620 in amended form.**

Composition of the Board:

Chairman M. O. Müller
Members: M. Maremonti
L. Bühler

Summary of Facts and Submissions

- I. The appeals by the opponent and the patent proprietor are against the opposition division's interlocutory decision according to which European patent No. 3 240 620 ("the patent") as amended in the form of auxiliary request 1, the claims of which were filed by letter received on 22 June 2022, and the invention to which it relates meet the requirements of the EPC.
- II. The opposition was filed invoking the grounds under Article 100(a) (in combination with Article 56 EPC) and (b) EPC. Reference was made to the following documents, *inter alia*:
- D1: Scholz et al., "*Structural optimization of membrane-based biogas upgrading processes*", Journal of Membrane Science 474, 2015, 1-10
- D2: Numerical simulation based on figure 7a of D1
- D2a: Corrected numerical simulation based on figure 7a of D1
- D6: US 2013/0098242 A1
- D13: European Association for the Streamlining of Energy Exchange, "*Common Business Practice*", 2005
- D16: Saur and Milbrandt, "*Renewable Hydrogen Potential from Biogas in the United States*", NREL, July 2014
- D22: Declaration of M. Priske dated 14 April 2023
- III. The opposition division's conclusions in the appealed decision included the following:

- the ground for opposition under Article 100(b) EPC did not prejudice maintenance of the patent as granted;
- the subject-matter of claim 1 as granted did not involve an inventive step in view of D1 taken as the closest prior art.

IV. Since in the case at hand the patent proprietor and opponent are both appellant and respondent, the board will refer to them as patent proprietor and opponent in the following.

V. In its statement of grounds of appeal and reply to the patent proprietor's appeal, the opponent submitted that the subject-matter of the claims as granted was insufficiently disclosed and lacked an inventive step. It corroborated its arguments by filing the following new items of evidence (labelled D24 and D25 by the opponent, new numeration by the board):

A24: Simulations based on figure 7a of D1 and on a variation with methane purity set at 98.5%

A25: Simulation based on a variation of figure 7a of D1 with methane purity set at 99%

VI. In its statement of grounds of appeal, reply to the opponent's appeal and a further submission, the patent proprietor contested the opposition division's reasoning and argued, *inter alia*, that the subject-matter of the claims as granted was sufficiently disclosed and involved an inventive step.

VII. The parties were summoned to oral proceedings as per their requests. In preparation for the oral proceedings, the board issued a communication under Article 15(1) RPBA.

- VIII. Both parties each filed a further submission after the board's communication.
- IX. Oral proceedings before the board were held on 11 November 2025 by videoconference in the presence of both parties.
- X. Final requests relevant to the decision
- The patent proprietor requested that the appealed decision be set aside and that the patent be maintained as granted.
- The opponent requested that the appealed decision be set aside and that the patent be revoked.
- XI. As regards the parties' submissions that are relevant to the decision, reference is made to these in the reasons for the decision set out below.

Reasons for the Decision

Main request - patent as granted - claim 1 - ground for opposition under Article 100(b) EPC - sufficiency of disclosure

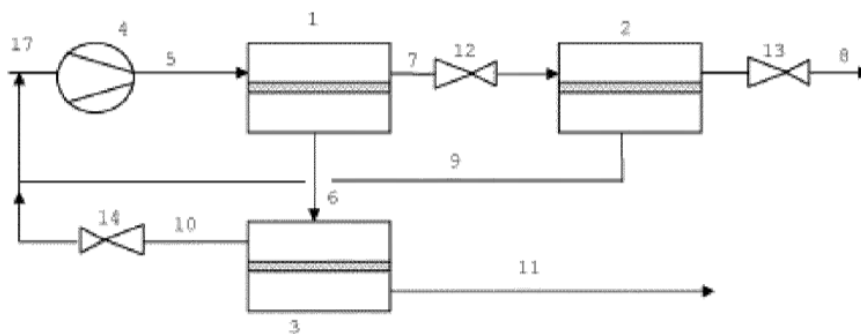
1. Claim 1 as granted reads as follows:

"1. A method for separating gases, wherein said method is carried out in an apparatus which comprises:

a feed stream separation stage (1), a retentate separation stage (2) and a permeate separation stage (3), and optionally a compressor (4) arranged up-stream of the feed stream separation stage (1) and/or at least one vacuum device arranged in at least one permeate stream of the feed stream separation stage (1), the retentate separation stage (2) and/or the permeate separation stage (3), wherein the feed stream separation stage (1) separates a feed stream (5) comprising at least two components into a first

permeate stream (6) and a first retentate stream (7), and the retentate separation stage (2) separates the first retentate stream (7) into a second permeate stream (9) and a second retentate stream (8), and the permeate separation stage (3) separates the first permeate stream (6) into a third retentate stream (10) and a third permeate stream (11), and the second retentate stream (8) is removed as a first product or further processed or optionally can be discarded if the third permeate stream (11) is removed or further processed; and the third permeate stream (11) is removed as product or further processed or optionally can be discarded if the second retentate stream (8) is removed or further processed, and the second permeate stream (9) and the third retentate stream (10) are fed to the feed stream, and the first permeate stream (6) is preferably not subjected to a recompression, and the feed stream separation stage (1), the retentate separation stage (2) and the permeate separation stage (3) are membrane separation stages, and the gas volume recycled in the second permeate stream (9) and in the third retentate stream (10) totals 60 to 100 % by volume of the crude gas stream (17), and the total capacity of the membranes, measured for nitrogen Grade 4.8 under standard conditions as defined in the description, used in the retentate separation stage (2) is higher than the total capacity of the membranes, measured for nitrogen Grade 4.8 under standard conditions as defined in the description, used in the feed stream separation stage (1), and the quotient of the pressure ratio over the permeate separation (3) stage [sic] to the pressure ratio of the feed stream separation stage (1) is in a range of from 0.5 to 8."

2. An apparatus as defined in claim 1 as granted is illustrated in figure 1 of the patent, reproduced below:



As done by the parties in their submissions, the board will use the following labels for three features of claim 1 as granted:

F12: *"the gas volume recycled in the second permeate stream (9) and in the third retentate stream (10) totals 60 to 100 % by volume of the crude gas stream (17)"*

F13: *"the total capacity of the membranes, measured for nitrogen Grade 4.8 under standard conditions as defined in the description, used in the retentate separation stage (2) is higher than the total capacity of the membranes, measured for nitrogen Grade 4.8 under standard conditions as defined in the description, used in the feed stream separation stage (1)"*

F14: *"the quotient of the pressure ratio over the permeate separation (3) stage [sic] to the pressure ratio of the feed stream separation stage (1) is in a range of from 0.5 to 8."*

3. The opponent argued that in order for the claimed subject-matter to be sufficiently disclosed the patent should provide the skilled person with sufficient information enabling them to implement an effective gas separation process that had all of features F12 to F14 of claim 1 as granted for any and all crude gas streams

and product streams, irrespective of their composition or purity.

- 3.1 The opponent submitted that it was left to the skilled person, without any guidance from the patent, to work out how to ensure that all the features F12 to F14 were met, irrespective of the composition and components that are to be separated and no matter how stringent the requirements for the purity of the product streams to be produced are.
- 3.2 The patent contained only a handful of examples, and only for the separation of CO₂ and methane. These examples did not show how the subject-matter of claim 1 might be implemented such that the process was operated and adjusted to independently meet features F12, F13 and F14 in order to achieve a certain end product specification. Even though claim 1 as granted did not explicitly mention any purity to be achieved, in practical reality the purity of e.g. methane was a commercial requirement. Meeting such a requirement was an implicit technical effect to be achieved by the claimed method. Assuming that the required methane purity was achieved by meeting features F13 and F14 but not F12, the patent did not contain any guidance allowing the skilled person to adjust the operating conditions so that F12 was also met, while still achieving the required methane purity.
- 3.3 Moreover, finding operating conditions able to meet F12 to F14 became more complex, and thus the undue burden placed on the skilled person even greater, when the task was the separation of a gas mixture other than methane and CO₂. In this respect, the opponent referred to the separation of nitrogen from methane, a mixture referred to in paragraph [0073] of the patent. Document D7 disclosed that such a separation was very problematic, especially when feature F12 had to be met.

In this regard, the opponent referred to examples 6, 21 to 23, 25, 27, 30, 31 and 41 of D7, and argued that, while F13 and F14 were met, F12 was never met. It was not apparent how the skilled person could, readily and without undue burden, have adjusted the operating conditions so to obtain the gas separation taught in these examples by meeting all the requirements of claim 1 as granted.

The opponent thus concluded that the subject-matter of claim 1 as granted was insufficiently disclosed.

4. These arguments are not convincing.
- 4.1 The mere fact that claim 1 as granted may be regarded as being broad as regards the crude gas to be separated and its composition as well as the composition of the product streams is not in itself a ground for considering that the claimed method is insufficiently disclosed.
- 4.2 As pointed out by the patent proprietor, claim 1 as granted does not require any specific purity to be achieved in the product streams, let alone concentration values according to certain commercial specifications as referred to by the opponent. Nor does it require that, in the event that the crude gas contains more than two gases as in some examples of D7, the claimed method should separate all three gases from each other. Thus the specific difficulties mentioned in D7 as regards the separation of nitrogen from methane when the crude gas contains nitrogen, methane and CO₂ is not relevant as far as sufficiency of disclosure of the claimed method is concerned.
- 4.3 The fact that in some examples of D7 features F13 and F14 were met whereas F12 was not is not relevant either. As submitted by the patent proprietor, the patent discloses in paragraph [0061] that the "*control*

of the volume of the gas streams to be recycled [feature F12] can be controlled, for example, through selection of the respective membrane modules in the membrane separation stages (1) to (3) or by the pressures in the system or by the flows" (text in square brackets inserted by the board). Moreover, paragraphs [0081] and [0082] of the patent disclose how the membrane capacity is calculated. No difficulties are apparent that would hinder the skilled person from controlling feature F13 as required by claim 1 as granted. Furthermore, paragraph [0054] of the patent discloses how feature F14 can be controlled. Finally, paragraphs [0086] to [0088] of the patent explain how the simulations of the claimed method were performed. Therefore no undue burden is placed on the skilled person trying to carry out a method as claimed, i.e. a method meeting features F12 to F14 so that a gas separation, no matter to what extent, is achieved.

- 4.4 Therefore the board concludes that the claimed subject-matter is sufficiently disclosed. The ground for opposition under Article 100(b) EPC does not prejudice maintenance of the patent as granted.

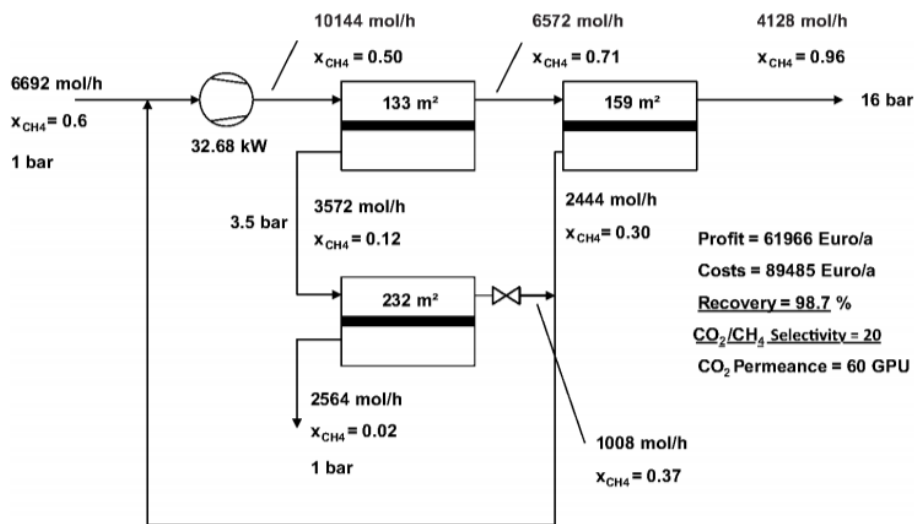
Main request - patent as granted - claim 1 - ground for opposition under Article 100(a) EPC - inventive step under Article 56 EPC

5. Closest prior art

5.1 In appeal, both parties presented their cases on inventive step in view of document D1, in particular the embodiment shown in figure 7a (page 7), taken as the closest prior art.

5.2 D1 (abstract and page 2) addresses the optimisation of membrane-based biogas upgrading processes by implementing a process model using the General Algebraic Modelling System (GAMS). The process is

optimised by determining an economic rather than an energetic optimum, by taking into account both operational and investment costs (point 2.2, "Economics" and tables 2 and 3 on pages 3 and 4). According to D1, for separating a CO₂/methane mixture with commercial membranes, a three-stage gas permeation process is the most profitable process which operates with only a single compressor. One embodiment of such a process using an apparatus with three membrane stages is depicted in figure 7a of D1 (page 7), reproduced below:



5.3 According to this embodiment, a crude CO₂/methane feed stream is fed to an apparatus comprising a feed stream separation stage, a retentate separation stage, a permeate separation stage and a compressor arranged upstream of the feed stream separation stage. The feed stream separation stage separates the feed stream into a first permeate stream and a first retentate stream, and the retentate separation stage separates the first retentate stream into a second permeate stream and a second retentate stream, and the permeate separation stage separates the first permeate stream into a third retentate stream and a third permeate stream. The second retentate stream is removed as a first product

and the third permeate stream is removed as a second product. The second permeate stream and the third retentate stream are recirculated to the feed stream. Additionally, the total capacity of the membrane used in the retentate separation stage (the membrane surface is 159 m²) is higher than the total capacity of the membrane used in the feed stream separation stage (the membrane surface is 133 m²), and the quotient of the pressure ratio over the permeate separation stage (3.5/1) to the pressure ratio of the feed stream separation stage (16/3.5) is 0.77, i.e. in the range of from 0.5 to 8 required by claim 1 as granted.

6. Distinguishing features

It is common ground that the subject-matter of claim 1 as granted differs from the above disclosure in D1 in feature F12. In fact, in the embodiment of figure 7a of D1 the recycled stream totals 1008 + 2444 = 3452 mol/h, i.e. 52% of the crude gas stream (6692 mol/h). It is thus outside the claimed range (60% to 100%).

7. Objective technical problem

7.1 The patent proprietor argued that feature F12 was a parameter which could be set to achieve the technical effects of the invention. In this respect, it especially referred to the simulations contained in document D22. In D22, the process of figure 7a of D1 was simulated first, to demonstrate that the software used for the simulation was able to reproduce the operating conditions of this embodiment of D1. The results were reported in the second column in the table on the last page of D22 ("*Validierungssimulation*"), while the operating conditions according to figure 7a of D1 were reported in the first column. A comparison showed that the process of the closest prior art could be reproduced well. Then, in a first variation of the

process of figure 7a of D1 ("*Variation 1*"), the recycling rate was increased to 61% so as to meet feature F12 of claim 1 as granted (from 60 to 100% of the crude gas stream). The results were reported in the third column of the same table and showed the attainment of a higher methane purity (97% vs. 96% of D1) and a reduced total membrane surface (493 m² vs. 524 m² of D1). In a second variation ("*Variation 2*"), the recycling rate was further increased to 83% and this led to a further increase in methane purity to 98% and a further reduction in the total membrane area (486 m²) (fourth column in the table of D22). In view of these results, the patent proprietor formulated the objective technical problem as the provision of a method achieving a higher methane purity with a reduced membrane capacity.

- 7.2 The opponent contested the presence of any technical effect linked to distinguishing feature F12.
- 7.2.1 It argued that meeting feature F12 did not guarantee that the overall amount of membrane capacity required by the process was reduced, regardless of whether this feature was considered on its own or in combination with features F13 and F14. Indeed, the amount of recycled gas was not an independent parameter that was set or that had the effect of changing the total amount of membrane capacity that was required by the process. Rather, it was merely a by-product of: (i) the starting composition and flow rate of the crude gas stream to be separated; (ii) the required compositions of the desired product streams, these being dictated by commercial requirements and/or environmental standards; and (iii) the absolute values of membrane capacities, selectivities and pressure ratios used in each of the separation stages. None of these factors were mentioned

in claim 1 as granted, which included only relative and no absolute values.

- 7.2.2 The opponent submitted that examples and comparative examples of the patent confirmed that an increased recycling rate was merely the result of the change in the membrane capacity of the various stages.
- 7.2.3 In D22, no attempt had been made to economically optimise the separation process with the aim of reaching a global optimum as taught in D1. The results in D22 could not prove any technical effect of feature F12 since more parameters than merely F12 had been changed, especially the absolute values of the membrane capacities in the three stages with the membrane surface having been increased in stages 1 and 2 and reduced in stage 3, and the pressure of the permeate in the first stage having been increased. A higher methane purity could thus not be directly and unambiguously ascribed to F12, no matter whether considered alone or in combination with F13 and F14. Moreover, only one set of changes had been analysed in D22, but the recycling rate could have been modified in numerous other ways which had not been investigated.
- 7.2.4 According to the opponent, whether or not a process produced high-purity products was dependent on the composition and flow rate of the crude gas feed stream and the absolute values of the membrane capacities, selectivities and pressure ratios used in each of the separation stages. None of these factors were specified in claim 1 as granted. This observation was confirmed by example 1.1 when compared with reference example 1 of the patent (paragraphs [0089] to [0096]): alterations to features F12 to F14 had no impact on the product purities, which remained the same.

7.2.5 The only conclusion that might be drawn from an increase in the recycling rate was an increase in the operational costs, as confirmed by paragraph [0036] of the patent.

The opponent thus concluded that, in the absence of any technical effect, the objective technical problem was merely the provision of an alternative method for separating gases.

7.3 The board does not find the opponent's arguments convincing for the following reasons.

7.3.1 According to the problem-solution approach, the objective technical problem has to be formulated on the basis of technical effect(s) associated with the feature(s) distinguishing the claimed subject-matter from the prior art, i.e. feature F12 in the case at hand.

7.3.2 As set out above with respect to the issue of sufficiency of disclosure, the board concurs with the patent proprietor's view that F12 is a process parameter that can be set independently, see paragraph [0061] of the patent. The latter teaches that the volume of the recycled gas stream can be controlled, for example, through selection of the membrane capacities or by the pressures in the system or by the flows.

7.3.3 As explained by the patent proprietor, this procedure was followed in the simulations *Variation 1* and *Variation 2* reported in D22 in order to demonstrate the technical effect of distinguishing feature F12. In fact, a variation of the volume to be recycled necessarily implies a modification of the membrane capacities or the pressures in the system or the flows.

If the latter were maintained constant, no variation of the recycling rate would have been obtained.

- 7.3.4 The board concurs with the patent proprietor's view that the simulations *Variation 1* and *Variation 2* reported in D22 convincingly demonstrate the effect of an increase in the recycling rate in comparison with the process of figure 7a of D1. As pointed out by the patent proprietor, once the recycling rate is set as an input for the simulations, membrane capacities, permeate pressures and permeate and retentate flows in the system have to be left open for calculation by the software in order to produce the new operating conditions corresponding to the recycling rate having been set. Under the calculated new operating conditions for both *Variation 1* and *Variation 2*, a decrease in the total membrane surface is obtained, while at the same time a higher methane purity is achieved.
- 7.3.5 The fact invoked by the opponent that no *global optimum* was looked for in the simulations *Variation 1* and *Variation 2* of D22 is irrelevant since these simulations aimed at investigating the technical effect of the distinguishing feature F12 in accordance with the problem-solution approach, and not to find a new *global optimum* under different operating conditions.
- 7.3.6 Also, the opponent's argument that depending on the composition and flow rate of the crude gas feed stream and the membrane selectivity, different product purities may be obtained, is irrelevant when the technical effect of distinguishing feature F12 has to be assessed. In fact, in both *Variation 1* and *Variation 2* as disclosed in D22, all these parameters were maintained constant and in accordance with the values reported in figure 7a of D1.

7.4 For these reasons, the board concurs with the patent proprietor's formulation of the objective technical problem as the provision of a method achieving a higher methane purity with a reduced membrane capacity.

8. Obviousness of the claimed solution

8.1 The opponent argued that since the process of figure 7a of D1 was already economically optimised under the given boundary conditions, the distinguishing feature F12 represented nothing more than a disadvantageous modification of the closest prior art, which might not contribute to any inventive step. Biogas upgrading processes having recycling rates of 60% to 100% of the feed stream as required by feature F12 were already known in the art. In this respect, the opponent referred to comparative example 1 of D6 (paragraphs [0072] to [0074]), where the recycling rate was 86.7%. Therefore the choice of a recycling rate meeting feature F12 represented nothing more than an arbitrary selection from the range of recycling rates already available to the skilled person. The opponent further noted that in figure 7a of D1 the methane concentration was set at 96% as a boundary condition. This was too low a concentration for certain applications, see e.g. the table on page 4 of D13 and table 14 on page 26 of D16. It was known to the skilled person that in order to increase the methane concentration in the retentate product more CO₂ had to permeate, this leading to an increase in the permeate stream and thus also the recycling rate. According to the opponent, this was confirmed by D1, point 3.3.2 on page 7. According to the opponent, further confirmation of the obviousness of feature F12 was provided by the simulations provided in D2, D2a, A24 and A25. According to the required product specifications, the skilled person would have aimed to increase the methane purity of 96% belonging

to the process depicted in figure 7a of D1. According to D1, should one or more of the boundary conditions of the process, e.g. the methane purity, be changed, the optimisation of the process would have to be re-run. This had been done in the simulations contained in D2, D2a, A24 and A25 where the methane purity had been increased. The results showed that feature F12 was met and that F13 and F14 continued to be met. The opponent thus concluded that the claimed subject-matter lacked an inventive step.

8.2 The board disagrees for the following reasons.

8.2.1 As set out above, the process illustrated in figure 7a of D1 has been economically optimised under a specific set of boundary conditions, notably a methane purity of 96%. However, the objective technical problem is the provision of a higher methane purity and a reduced membrane surface. Hence possible economic disadvantages are not relevant. When looking for a solution to this technical problem, the skilled person would necessarily have departed from the operating conditions taught in figure 7a of D1.

8.2.2 As submitted by the patent proprietor, D1 does not contain any indication that an increase in the recycling rate may lead to an increased methane purity while at the same time decreasing the overall surface area. The disclosure under point 3.3.2 on page 7 of D1 pointed out by the opponent (and the opposition division, see appealed decision, page 11, point 4.3.2) merely states that by increasing the membrane selectivity the purity would increase, leading in turn to an increase in the recycling rate. Therefore this disclosure associates an increase in the methane purity with an increase in the membrane selectivity, whereby an increase in the recycling rate is merely disclosed as the consequence and not the cause of the increase in

purity. Moreover, no indication is given in this disclosure that the increase in the recycling rate would have led to a decrease in the overall membrane surface. Thus the skilled person would not have been prompted by D1 to increase the recycling rate when aiming to solve the objective technical problem.

- 8.2.3 Comparative example 1 of D6 (paragraphs [0072] to [0074]), while disclosing a methane/CO₂ separation process with a recycling rate in the claimed range, does not link such a recycling rate to an increase in methane purity, let alone a decrease in the total membrane surface.
- 8.2.4 In the simulations reported in D2, D2a, A24 and A25, the model disclosed in D1 was re-run with a higher methane purity (98.5% in D2, D2a and A24; 99% in A25) as a boundary condition. The results show that all the features F12 to F14 of claim 1 as granted are met. The simulations provided in D2, D2a, A24 and A25 are based on the assumption that the skilled person, in view of commercial indications provided e.g. in D13 (table on page 4) and D16 (table 14 on page 26), would have re-run the process disclosed in figure 7a of D1 with an increased methane purity as a new boundary condition and, in doing so, would have arrived at the claimed subject-matter.
- 8.2.5 However, the board concurs with the patent proprietor's view that the simulations reported in D2, D2a, A24 and A25 are not relevant since they are not based on the teaching of D1. In fact, as pointed out by the patent proprietor, D1 discloses (point 2, "*Process model*" on page 2) that the boundary conditions, *inter alia* the methane purity, were chosen according to product gas requirements for a common biogas upgrading process. Moreover, when investigating an increase in the methane purity, D1 discloses (point 3.3.2 on page 7) that the

membrane selectivity would have to be increased and that "*the required product purity has to be chosen carefully, since it has a tremendous impact on the process performance and only the required natural gas standard should be met.*" Therefore D1 suggests acting on the membrane selectivity and not on the recycling rate when a higher methane purity is required. Additionally, no suggestion is given in D1 as regards the attainment of a decrease in the total membrane surface, let alone a link between the latter and the recycling rate.

- 8.2.6 The same is true when D13 and D16 are considered. These documents merely mention possible methane specifications but do not contain any disclosure that would have prompted the skilled person to modify the recycling rate in the process of D1 when trying to solve the objective technical problem.
- 8.2.7 The opponent failed to indicate a suggestion in the available prior art which would have encouraged the skilled person to increase the recycling rate in the process of figure 7a of D1 when looking for both a higher methane purity **and** a decreased membrane surface.
- 8.3 For these reasons, the board concludes that the subject-matter of claim 1 as granted involves an inventive step (Article 56 EPC).
9. The patent proprietor had requested that documents A24 and A25 not be admitted. Since the board arrived at the above conclusion in favour of the patent proprietor even by taking documents A24 and A25 into account, there was no need for it to decide on this request.
10. The opponent did not raise any other inventive-step objections against the subject-matter of claim 1 as granted. It follows that the ground for opposition under Article 100(a) EPC in combination with Article 56

EPC does not prejudice maintenance of the patent as granted.

Conclusions

11. The patent proprietor's main request is allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



U. Bultmann

M. O. Müller

Decision electronically authenticated