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Datasheet for the decision of 5 May 2026

Case Number: T 1057/24 - 3.2.05

Application Number: 17181351.2

Publication Number: 3306160

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Language of the proceedings: EN

Title of invention:
Adhesive transfer hose having a barrier layer and method of use

Patent Proprietor:
Nordson Corporation

Opponents:
Baumer hhs GmbH
Focke Meler Gluing Solutions, S.A.
TEAT S.P.A.

Relevant legal provisions:
EPC Art. 84, 100(c), 111(1), 111(2), 116, 123(2)
RPBA 2020 Art. 11, 12(6), 13(2), 15a(1)

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Keyword:

Oral proceedings - request for oral proceedings to be held by videoconference (refused)
Grounds for opposition - added subject-matter (yes)
Amendments - added subject-matter (auxiliary requests 1 to 5, 5a: yes; auxiliary request 5c: no)
Late-filed request - error in use of discretion at first instance (auxiliary request 5b: no) - admitted (auxiliary request 5b: no; auxiliary request 5c: yes)
Late-filed argument - admitted (yes)
Claims - clarity (auxiliary request 5c: yes)
Late-filed objection - admitted (no)
Remittal (yes)

Decisions cited:

G 0007/93, G 0003/14, T 0170/87, T 0410/91, T 0640/91, T 0843/91, T 0027/94, T 0609/94, T 0352/05, T 1630/08, T 0383/11, T 0204/22, T 1238/22, T 2194/22, T 1092/23, T 0781/24

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Case Number: T 1057/24 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 5 May 2026

Appellant: (Patent Proprietor)	Nordson Corporation 28601 Clemens Road Westlake, OH 44145 (US)
Representative:	Eisenführ Speiser Patentanwälte Rechtsanwälte PartGmbB Postfach 10 60 78 28060 Bremen (DE)
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Representative:	Patentship Patentanwaltsgesellschaft mbH Paul-Gerhardt-Allee 50 81245 München (DE)
Respondent II: (Opponent 2)	Focke Meler Gluing Solutions, S.A. Pol. Arazuri-Orkoien, c/B, n°3 A, 31170 Arazuri-Navarra (ES)
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Respondent III: (Opponent 3)	TEAT S.P.A. Via Nicolino di Galasso, 38 47891 Galazzano (SM)
Representative:	Minghetti, Mauro Apta S.r.l. Piazza dei Martiri, 1 40121 Bologna (IT)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 3 July 2024 revoking European patent No. 3306160 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman P. Lanz
Members: T. Vermeulen
B. Burm-Herregodts

Summary of Facts and Submissions

I. The appeal was filed by the patent proprietor against the decision of the opposition division to revoke European patent No. 3 306 160 ("the patent").

II. Three oppositions had been filed against the patent as a whole on the basis of the grounds for opposition under Article 100(a) together with Article 54(1) EPC (lack of novelty) and Article 56 EPC (lack of inventive step), under Article 100(b) EPC and under Article 100(c) EPC.

III. In the decision under appeal, the opposition division came to the following conclusions.

- The ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted.
- Auxiliary requests 1 to 5, 5a and 6 to 30 were admitted into the proceedings.
- Auxiliary requests 5b, 7a, 8a, 14a, 15a, 16a, 21a, 22a and 23a were not admitted into the proceedings.
- The amendments to claim 1 of each of auxiliary requests 1 to 5, 5a and 6 to 36 contravened Article 123(2) EPC.

IV. Points 7, 8 and 9 of the summary of facts and submissions of the decision under appeal refer to an expert opinion filed by the appellant with letter dated 7 March 2024 as 'ES2', to documents D67 to D82, to third-party observations received on 3 May 2024 and to documents D83 to D86. None of these documents, however, appears in the reasons for the decision under appeal.

V. Together with their statement of grounds of appeal, the appellant filed the following documents.

ES4 "Metal Hose", Wikipedia article
ES5 Gropp et al, "Flexible metallische Leitungen", 4th edition, 2016, pages 4 to 71
ES6 excerpts from various dictionaries

VI. Together with their reply to the statement of grounds of appeal, respondent I filed the following documents.

ESX1 "isopad - IHH-ST1A/ST1D Previously IHH-100", Thermocoax, datasheet, E431 11/12
ESX2 "Heizschlauch - Mehr als eine Verbindung von A nach B", Hillesheim GmbH, online article, 23 January 2015
ESX3 "Hot Melt Hose (adhesive, molten plastic)", Unitherm, online article, 21 July 2013
ESX4 "Metal Hoses", Hansa-Flex, catalogue, 10/2015
ESX5 "Basic knowledge of flexible metal hose", SSFlex, online article, 28 October 2014

VII. On 18 June 2025, the parties were summoned to oral proceedings to be held in person on the EPO premises.

VIII. In a communication pursuant to Article 15(1) RPBA issued on 12 December 2025, the parties were informed of the board's provisional opinion on the issues of the case.

IX. With letter dated 12 March 2026, the appellant provided further arguments in support of their case.

X. With letters dated 17 and 23 April 2026, respondents II and I, respectively, requested to hold the oral

proceedings in the form of a videoconference. Respondent III expressed their agreement with the videoconference format in a letter dated 27 April 2026.

XI. In a telephone call with the Registry held on 27 April 2026, the representative of the appellant indicated that, as a matter of principle, an oral proceedings conducted in person would be considered preferable, particularly in the present case.

XII. With letter dated 27 April 2026, respondent II provided further arguments in support of their case.

XIII. The parties were informed by a communication issued on 28 April 2026 that the format of the oral proceedings remained as summoned.

XIV. Oral proceedings before the board were held on 5 May 2026.

XV. The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or, alternatively, as amended on the basis of the claims of one of auxiliary requests 1 to 5, 5a, 5b, 5c, 6, 7, 7a, 7b, 7c, 8, 8a, 8b, 8c, 9 to 14, 14a, 14b, 14c, 15, 15a, 15b, 15c, 16, 16a, 16b, 16c, 17 to 21, 21a, 21b, 21c, 22, 22a, 22b, 22c, 23, 23a, 23b, 23c and 24 to 36, wherein

- auxiliary requests 1 to 5, 5a, 6 to 36 underlay the contested decision,
- auxiliary requests 5b, 7a, 8a, 14a, 15a, 16a, 21a, 22a and 23a were filed during the oral proceedings held before the opposition division,
- auxiliary requests 5c, 7b, 7c, 8b, 8c, 14b, 14c, 15b, 15c, 16b, 16c, 21b, 21c, 22b, 22c, 23b and 23c

were filed with the statement of the grounds of appeal.

The appellant further requested, as an auxiliary measure, not to admit documents D67 to D82 into the proceedings, not to admit the anonymous third-party observations dated 3 May 2024, in particular documents D83 to D86 cited therein, into the proceedings and to remit the case to the opposition division for further prosecution in case one of the claim requests was found to comply with Article 123(2) EPC and Article 84 EPC.

Respondent I (opponent 1) requested that the appeal be dismissed, that auxiliary requests 5b, 5c, 7a, 7b, 7c, 8a, 8b, 8c, 14a, 14b, 14c, 15a, 5b, 15c, 16a, 16b, 16c, 21a, 21b, 21c, 22a, 22b, 22c, 23a, 23b and 23c and document ES2 not be admitted into the proceedings but that documents D67 to D86 and ESX1 to ESX5 be admitted into the proceedings.

Respondent II (opponent 2) requested that the appeal be dismissed, that auxiliary requests 5b, 5c, 7a, 7b, 7c, 8a, 8b, 8c, 14a, 14b, 14c, 15a, 5b, 15c, 16a, 16b, 16c, 21a, 21b, 21c, 22a, 22b, 22c, 23a, 23b and 23c and documents ES4, ES5, ES6 not be admitted into the proceedings but that documents D83 to D86 be admitted into the proceedings. Respondent II further requested that the appellant's counterarguments set out in point II of their letter dated 12 March 2026 not be admitted in the proceedings.

Respondent III (opponent 3) requested that the appeal be dismissed.

The respondents requested additionally that the case be remitted to the opposition division for further prosecution including discussion of Articles 84 and 83

EPC. In this respect, respondent II requested that the case be remitted to the opposition division with limitation of the further prosecution to the claim request that was considered to comply with Article 123(2) EPC.

XVI. Claim 1 of the patent as granted (the appellant's main request) has following wording (the feature numbering used in the contested decision appears in square brackets).

"[**1.1**] A multi-layered hot melt adhesive transfer hose (700), comprising: [**1.2**] a flexible metal inner tube (702) for transporting heated liquid hot melt adhesive [**1.3**] and forming an impermeable barrier layer configured to prevent the ingress of oxygen from passing through the flexible metal inner tube and into the hot melt adhesive; [**1.4**] at least one structural layer (704, 705) configured to withstand a fluid pressure; [**1.5**] an outer covering (706) overlaying and in contact with an exterior surface of the at least one structural layer (704, 705), and [**1.6**] a heater for maintaining the hot melt adhesive at a set point, [**1.7**] wherein the heater is adapted to be electrically coupled to a power source controlled to maintain the set point to about 230°C (450°F) or less for an extended period of time."

XVII. Claim 1 of auxiliary request 1 differs from claim 1 of the patent as granted by the following amendments to features 1.1, 1.2 and 1.3.

"[1.1] A multi-layered hot melt adhesive transfer hose (700) <u>for transfer of hot melt adhesive</u>, <u>the hose (700)</u> comprising:"

"[1.2] a flexible metal inner tube (702) forming a conduit for transporting heated liquid hot melt adhesive",

"[1.3] and forming an impermeable barrier layer configured to prevent the ingress of oxygen from passing through the flexible metal inner tube and into the hot melt adhesive; said flexible metal inner tube (702) forming the operative core of the hose (700) through which the molten hot melt adhesive flows, said flexible metal inner tube (702) made from stainless steel and comprises a plurality of seamless corrugations;"

XVIII. Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 by the following amendments to feature 1.4 and 1.5.

"[1.4] ~~at least one~~ two overlapping structural layers (704, 705) configured to withstand a fluid pressure and disposed about the exterior of the flexible metal inner tube (702) and serving to provide added strength and protection to the inner tube (702), said structural layers (704, 705) each comprising a braided jacket of a thermally stable material;"

"[1.5] an outer covering (706) overlaying and in contact with an exterior surface of the ~~at least one~~ two overlapping structural layers (704, 705), and"

XIX. Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 1 by the following amendment to feature 1.4.

"[1.4] at least one structural layer (704, 705) configured to withstand a fluid pressure, such that the hose (700) can withstand pressures of up to 10.3 MPa (1500 psi);"

XX. Claim 1 of auxiliary request 4 corresponds to claim 1 of auxiliary request 2 with a further amendment at the end of feature 1.4 that is identical as that of claim 1 of auxiliary request 3.

XXI. Claim 1 of auxiliary request 5 differs from claim 1 of auxiliary request 1 by the following amendment to feature 1.5.

"[1.5] an outer covering (706) overlaying and in contact with an exterior surface of the at least one structural layer (704, 705), wherein the outer covering (706) has a multilayered structure, wherein the outer covering layer (706) further comprises a heating tape sublayer, an insulation sublayer covering the heating tape sublayer, and a protective sublayer covering the insulation sublayer, and"

XXII. Claim 1 of auxiliary request 5a differs from claim 1 of auxiliary request 1 by the following amendment to feature 1.5.

"[1.5] an outer covering (706) overlaying and in contact with an exterior surface of the at least one structural layer (704, 705), wherein the outer covering (706) has a multi-layered structure, wherein the outer covering layer (706) further comprises a heating tape sublayer or heating wire sublayer, an insulation sublayer, and a protective sublayer, wherein the heating tape sublayer or

heating wire sublayer is in contact with an outer surface of the structural layer (704, 705) and is covered by the insulation sublayer, wherein the protective sublayer covers the insulation sublayer, and"

XXIII. Claim 1 of auxiliary request 5b differs from claim 1 of auxiliary request 1 by the following amendments to features 1.5 and 1.6.

"[1.5] an outer covering (706) overlaying and in contact with an exterior surface of the at least one structural layer (704, 705), wherein the outer covering (706) has a multi-layered structure, wherein the outer covering layer (706) further comprises a heating tape sublayer, an insulation sublayer, and a protective sublayer, wherein each sublayer of the outer covering is a separate and distinct layer, wherein the heating tape sublayer is in contact with an outer surface of the structural layer (704, 705) and is covered by the insulation sublayer, wherein the protective sublayer covers the insulation sublayer, wherein the heating tape serves to provide uniform conduction heating to the hose, and"

"[1.6] a heater including a heating tape, wherein the heating tape forms the heating tape sublayer, and for maintaining the hot melt adhesive at a set point,"

XXIV. Claim 1 of auxiliary request 5c corresponds to claim 1 of auxiliary request 1 with the same amendment to feature 1.5 as claim 1 of auxiliary request 5b, but without the amendment to feature 1.6.

XXV. The appellant's submissions may be summarised as follows.

Format of the oral proceedings

As a matter of principle, the appellant would prefer an oral proceedings conducted in person, particularly in the present case. They would, however, not object to the oral proceedings being held in a hybrid (mixed-mode) format.

Main request (patent as granted)

The ground for opposition under Article 100(c) EPC did not prejudice the maintenance of the patent as granted. Claim 1 as granted was essentially a combination of claims 1 and 2 as well as paragraphs [0078], [0083] and [0014] and Figures 13A to 14B of the application as filed. Basis could also be found in claims 5, 10 and 13 as well as in paragraph [0084] of the application as filed, according to which the heating tape sublayer was in contact with an outer surface of the structural layer. This necessarily implied that also the outer covering in general was in contact with the structural layer, especially since it followed from paragraph [0083] that the requirement that the outer covering had multiple layers was optional. Furthermore, it was evident from Figures 13A, 13B, 14A, and 14B, none of which showed an outer covering with a multi-layered structure, that the outer covering 706 was in contact with the exterior surface of the structural layer 704, 705. Further basis for the amendment "in contact with" could be found in the alternative transfer hose 200 as illustrated in Figures 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5B, and as described in paragraph [0058] of the application as filed as having various layers in

contact with an adjacent layer. From a comparison with Figures 13A to 15B, it was clear that the respective outer layer was overlaying and in contact with the exterior surface of the structural layer 104, 704, 705. The original disclosure of a feature could not depend on the alleged relevance of the cited prior art. The opposition division's reasoning was based on the wrong legal principles and not convincing from a skilled person's understanding. Regarding the disclosure of the drawings, the opposition division had already acknowledged that Figures 13 and 14 showed no gap between the outer covering and the structural layer. A skilled person derived from the collective view of the drawings that the braided structure extended into the 3D-shape of the structural layer 704. Reproducing the exact contours of the rather complex three-dimensional braided structure in the cross-sectional views would have rendered the figures unclear and potentially incomprehensible. The skilled person had no doubt that the exterior surface of the braided structural layer 704 was in contact with the (interior surface of the) outer covering 706. Otherwise, the figures would show two concentric lines with a gap in between or the text would mention a gap. There was no reasonable basis in the application underlying the opposed patent – and certainly not for a skilled person – to assume that the layers could not be in contact.

Auxiliary requests 1 to 5

The claims of auxiliary requests 1 to 5 were in accordance with Article 123(2) EPC.

Auxiliary request 5a

All necessary features that referred to the multi-layered structure of the outer covering had been added to claim 1 so that the objection of added matter against the main request had been overcome. Claim 1 of the application as filed already defined a hose with a heater in accordance with features 1.6 and 1.7. Dependent claim 5 of the application as filed added an outer covering layer comprising a heating tape sublayer to that subject-matter. The heating wire sublayer was mentioned in paragraphs [0015] and [0087] of the application as filed. As with claims 1 and 5, these passages also related to the "metal barrier layer" embodiment of Figures 13A to 15B. Paragraph [0015] clearly disclosed that the heating wire sublayer was part of the multi-layered outer covering layer and that it was an alternative to the heating tape sublayer. Therefore, the relative arrangement of the sublayers described in paragraph [0084] extended to the heating wire sublayer. Paragraph [0087] explained that the heater could include at least one heating wire. The word "further" used in that context merely expressed that the heating wire was an alternative to the heating tape sublayer of the previous paragraphs. The first sentence of paragraph [0087] referred generally to the requirement to heat hot melt adhesives in a certain temperature range, as, for example, previously described in paragraphs [0012], [0016], [0017], [0022], [0050] and in particular [0056]. The term "inner core", which only appeared in paragraph [0087], referred to both the inner tube and the structural layer. As a consequence, it could not be concluded that the heating tape sublayer and the heating wire sublayer were located in different positions and had different functions. In contrast, the skilled person understood

the relationship between the heater, on the one hand, and the heating tape sublayer or heating wire sublayer, on the other hand, as one between a (superordinate) functional unit and structural sub-units that implemented the heater's function. The opposition division's reasoning in this respect referred to a lack of clarity under Article 84 EPC or perhaps insufficiency of disclosure under Article 83 EPC, rather than to extension of subject-matter under Article 123(2) EPC. Paragraph [0078] belonged to a different embodiment and could not call into question the clear teaching in paragraph [0015] that the heating wire sublayer was part of the outer covering layer. The observation that the heater was not shown in any of the figures was legally irrelevant. Any speculation that the installation of a heating wire sublayer might have different structural implications than the installation of a heating tape sublayer was baseless.

Auxiliary request 5b

The circumstances of the appeal case justified the admittance of auxiliary request 5b under Article 12(6) RPBA. The claims of auxiliary request 5b had been filed during the oral proceedings in a last attempt to overcome all of the opposition division's objections under Article 123(2) EPC. The opposition division's consideration that the additional feature in claim 1 of auxiliary request 5b had no basis in the application as filed failed to take into account the skilled person's knowledge and the disclosure of the application as filed. Even if there was no literal basis for the feature, the skilled person would directly and unambiguously derive from the original disclosure that the heater, as a superordinate functional unit, could include a heating tape, wherein the heating tape formed

the heating tape sublayer. The further argument that the objection based on the allegedly non-disclosed relationship between the heater and the heating tape/ wire sublayer was "insurmountable" was based on an erroneous legal assessment by the opposition division.

Auxiliary request 5c

(a) Admittance

The claims of auxiliary request 5c should be admitted into the appeal proceedings. The amendments to claim 1 overcame the objections of added matter. In particular, by deleting the alternative "heating wire sublayer", the deficiencies identified in the context of auxiliary request 5a had been addressed. Moreover, claim 1 of auxiliary request 5c converged compared to claim 1 of auxiliary request 5a. The amendments were not complex, they were a direct reaction to the reasons given in the decision under appeal. As the appellant had not been given an opportunity to file further requests towards the end of the oral proceedings held before the opposition division, after auxiliary request 5b had not been admitted, the claims of auxiliary request 5c could not have been filed earlier. It had to be taken into account that the oral proceedings did not proceed in a normal manner. The opposition division expressed its view that one of the issues with Article 123(2) EPC was insurmountable, but only provided the details in the written decision. Thus, it would have been pointless for the appellant to file further auxiliary requests even if there had been sufficient time to prepare them. Furthermore, the respondents' view that claim 1 of auxiliary request 5c was *prima facie* not allowable in view of the expression "at least one structural layer" had not been raised in the written appeal submissions.

Anyway, it assumed that clarity could be examined which was not the case since the expression had already been in the claims of the patent as granted. The appellant had provided arguments in support of admitting auxiliary request 5c already in the statement of grounds of appeal, see on pages 3, 105 and 106. The respondents' allegation of lack of substantiation, which had not been raised in the written appeal proceedings, was baseless.

(b) Allowability of the amendments

None of the respondents' further objections (i) to (vi) against claim 1 of auxiliary request 5c had been raised in the replies to the statement of grounds of appeal. They were unfounded.

The appellant's counterarguments in this respect were of legal nature and could, thus, always be presented. They should be admitted into the appeal proceedings.

Regarding further objection (i), paragraphs [0077] to [0079], claims 1 and 2, and Figures 13A and 13B of the application as filed consistently described an embodiment in which the inner tube 702 was the barrier layer, and *vice versa*, thereby forming the conduit for the liquid hot melt adhesive and being the operative core of the whole hose. This understanding was in line with paragraph [0013] from the general description of the invention in the application as filed. It was not apparent which further layer should be required to form a barrier layer pursuant to above passages.

Regarding further objection (ii), given that the barrier layer of claim 1 was made from stainless steel, it would block gases, such as oxygen, and would be

inherently impermeable to moisture. In a normal environment, the hose would be surrounded by air comprising 78% nitrogen, 21% oxygen and 1% argon and some moisture. Thus, it necessarily also prevented the ingress of those elements. The skilled person would derive from the application as a whole that preventing the ingress of oxygen was decisive to solve the underlying problems of charring and discoloration. The respondents' argument in respect of hydrogen permeation was, therefore, not pertinent. Furthermore, from a legal point of view, a requirement to prevent the ingress of other gases was not a clear technical teaching that a skilled person would attribute a meaning to in the sense of a limitation of the claimed subject-matter when reading the description.

Regarding further objection (iii), the order of the layers in claim 1 was retained and implied that the structural layer was disposed about the exterior of the inner tube. The fact that the structural layer of claim 1 was configured to withstand a fluid pressure implied that it reinforced the inner tube to the extent that it could withstand the fluid pressure produced within the inner tube. Already the term "structural layer" taught that the layer provided structural integrity to the hose from a skilled person’s perspective, in particular in the context of the multiple layers and their functions specified in the claim. The entire description of the application as filed consistently referred to "reinforcement" only as the function of one or more structural layers.

Regarding further objection (iv), the terms "insulation layer" and "protection layer" were functional features that fulfilled the functions to insulate and to protect, respectively. Claim 5 of the application as

filed was already a sufficient basis for the amendment. Besides, the disclosure in paragraph [0083] of the application as filed was not more specific than the functions of insulation and protection when properly assessed with respect to the technical information actually conveyed. Insulation in the context of a transfer hose for hot melt adhesive inherently served the purpose of controlling heat loss, all the more so since, from the order of the different layers, it was clear that the insulation was aimed at the heat produced by the heating tape sublayer. In the same context, protection necessarily meant protecting the hose from damage. Physical abuse was so broad that it did not actually convey any meaning to the sublayer. Protection against both minor physical abuse, such as stepping on the hose, and severe physical abuse, such as pinching the hose with pliers, was comprised by the original disclosure.

Regarding further objection (v), already in claim 1 of the application as filed, the hose comprised at least one structural layer. Paragraph [0081] of the application as filed disclosed a plurality of structural layers 704. Of course, the contact with the outer covering, which was positioned at the outside of all the other layers, must always take place at the outer one of the structural layers. As a consequence, there was basis for a contact between the heating tape sublayer and an outer surface of the outermost structural layer, in case there was more than one structural layer.

Regarding further objection (vi), claim 1 of the application as filed defined a heater with respect to its function, while only in claim 5 of the application as filed it was indicated where the heating took place,

namely in a heating tape sublayer of the outer covering layer. The heating tape sublayer could, thus, be part of the heater.

(c) Request for remittal

It was requested to remit the case to the opposition division for further prosecution only in case one of the claim requests was found to comply with Article 123(2) EPC and Article 84 EPC. The case should not be remitted before discussing the clarity objections raised by the respondents. In addition, there was no legal basis for respondent II's request to limit the further prosecution to the claim request that was considered to comply with Article 123(2) EPC.

(d) Clarity

The first clarity objection could not be examined since the combination of the heater and the heating tape sublayer was already in claims 1 and 6 of the patent as granted. The second clarity objection had to be rejected as unconvincing, since the inner tube and the operative core clearly referred to a single, unitary element of the claimed hose. Regarding the third clarity objection, the outer covering and the outer covering layer in feature 1.5 were clearly identical. Moreover, these features already appeared in claim 6 of the patent as granted; they could, therefore, not be examined under Article 84 EPC. The argument in respect of the uniform conduction heating was a new objection presented for the first time at the oral proceedings before the board; it should not be admitted into the appeal proceedings.

XXVI. The respondents' submissions may be summarised as follows.

Format of the oral proceedings

The oral proceedings should be conducted via videoconference. This would save the parties and their professional representatives significant travel time and high travel and accommodation costs. The subject-matter of the proceedings was also suitable for an oral proceedings by videoconference, as demonstrated by the oral proceedings before the opposition division, which were already held as a videoconference. In the age of digital files, accessing case documents during in-person oral proceedings was, in view of the relatively small size of the laptops that must be brought along, significantly more difficult and generally slower to manage than when using large-format screens, such as those usually available at the representative's office. This applied all the more in the present case, given the considerable number of documents on file.

Main request (patent as granted)

The ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted, because there was no basis in the application as filed for feature 1.5. Figures 13A to 15B were very schematic. There was no direct and unambiguous disclosure of an outer covering in contact with an exterior surface of a structural layer. To the extent that a contact was understood as the lack of an air gap, it had to be taken into account that the case law posed strict requirements on the disclosure of negative features in drawings. But even if the absence of a gap could be derived from the figures, they concerned

specific embodiments disclosing further features, such as the braided layer, the helical corrugations of the inner tube having a specific thickness, pitch and height, and also the contact between the other layers, all of which were inextricably linked to the contact feature. The amendment, therefore, resulted in an intermediate generalisation for which there was no basis in the application as filed. Paragraphs [0083] and [0084] of the application as filed did not disclose an overlaying arrangement and a contact for a general outer covering, but only for an outer covering comprising a heating tape sublayer and insulation and protective sublayers. Paragraph [0014] of the application as filed had to be read together with paragraphs [0012] and [0013] which, however, concerned a different subject-matter. The embodiment of Figures 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5B could not be used as a basis for the amendment.

Auxiliary requests 1 to 5

The objection of added matter was not overcome by the amendments to claim 1 of auxiliary requests 1 to 5 (Article 123(2) EPC).

Auxiliary request 5a

The objection of added matter was not overcome by the amendments (Article 123(2) EPC). Paragraph [0084] only mentioned a heating tape sublayer in contact with an outer surface of the structural layer. Claim 5 of the application as filed could not serve as a basis for the amendment, since it depended solely on claim 1 as filed and was not disclosed in combination with the additional features, such as the corrugations, which were now present in amended claim 1. Because of the

contact between the heating wire sublayer and the outer surface of the structural layer, the heating wire sublayer had to be arranged outside of the structural layer. However, this was in contrast to the disclosure of paragraph [0087] that the heating wire was wrapped around an exterior surface of the inner core, i.e. the inner tube without the structural layer. Furthermore, a heating wire typically had electrical insulation preventing it from being in contact with the surface. Within the embodiment of Figures 13A to 15B, the heating tape sublayer and the heating wire were not disclosed as alternatives. Paragraph [0015] of the application as filed was part of the general description. It was not clear whether that passage also applied to the detailed embodiments. Moreover, it did not imply that every disclosure relating to the heating tape sublayer automatically applied to the heating wire sublayer. Hence, paragraph [0015] did not directly and unambiguously disclose that the heating wire sublayer was also in contact with an outer surface of the structural layer.

Auxiliary request 5b

The appellant did not substantiate at all in what way the opposition division erred when exercising its discretion not to admit auxiliary request 5b. The mere fact that they did not agree with the opposition division's assessment under point 5 of the reasons for the decision under appeal was by no means sufficient to demonstrate an error of discretion. Rather, in its decision not to allow auxiliary request 5b, which was filed very late, the opposition division had correctly exercised its discretion by basing its decision not to admit the auxiliary request on the principle of *prima facie* relevance developed in the case law of the EPO

Boards of Appeal. Therefore, the discretionary decision could not be called into question. The appellant even admitted that there was no literal disclosure of the amended feature of claim 1 of auxiliary request 5b. The deletion of 'heating wire sublayer' did not mean that the combination of a heater with an additional heating tape, which was still present in claim 1, could now be regarded as directly and unambiguously disclosed. Furthermore, new issues had arisen. The person skilled in the art could not deduce from the relevant passages of the application as filed that the heating tape was intended to be a component of the heater. Therefore, the requirements of Article 123(2) EPC were clearly not met so that auxiliary request 5b should not be admitted on appeal either.

Auxiliary request 5c

(a) Admittance

The claims of auxiliary request 5c should not be admitted into the appeal proceedings pursuant to Article 13(2) RPBA. Though filed with the grounds of appeal, the appellant had not explained in their statement which amendments had been carried out or why the amendments overcame the objections raised, so that the substantiation requirements had not been met at that time. Only at the oral proceedings before the board did the appellant provide reasons for filing the amendments. Admitting the claims of auxiliary request 5c would be detrimental to procedural economy. There was no apparent reason why the appellant had not submitted these amendments already during the proceedings before the opposition division, despite several opportunities to do so. In fact, the appellant had submitted, for the first time at the oral

proceedings before the opposition division, auxiliary request 5a together with eight further auxiliary requests and, only when auxiliary request 5a was not found allowable, also auxiliary request 5b. Compared to auxiliary request 5a, claim 1 of auxiliary request 5c omitted the alternative of the heating wire sublayer. However, the same amendment had already been made in claim 1 of auxiliary request 5b, albeit in combination with an additional feature which the opposition division had previously found to be unallowable in the context of the then auxiliary request 1. Also the opposition division's change of view regarding feature 1.5 did not justify admitting auxiliary request 5c on appeal. The central issue with respect to the outer covering being in contact with an outer surface of the structural layer had already been raised by all three respondents in their notices of opposition. The fact that the opposition division initially took a different view on this issue did not relieve the appellant of their duty of care to prepare for all objections raised. A change of opinion in light of the written submissions exchanged by the parties and the discussion at the oral proceedings was a normal and foreseeable part of inter-partes proceedings. Another reason for not admitting auxiliary request 5c was that the claimed subject-matter was not *prima facie* allowable. The objection under Article 123(2) EPC regarding the missing relationship between the heater and the heating tape sublayer had not been overcome. There were further violations of Article 123(2) EPC, such as the possibility that the outer covering was in contact with an outer surface of more than one structural layer. This objection had been raised already in respondent I's reply to the statement of the grounds of appeal.

(b) Allowability of the amendments

Six further objections (i) to (vi) under Article 123(2) EPC had been raised against higher-ranking requests in respondents I and II's replies to the statement of grounds of appeal. It was a fundamental principle of procedural economy and proper procedural conduct that such objections continued to apply to all lower-ranking requests, provided that the objection in question was not overcome by the amendments made to the respective preceding request, which was not the case here.

The appellant did not address the further objections until after having received the board's preliminary opinion. There was no justification for this belated filing within the meaning of Article 13 RPBA. Accordingly, it was requested that the appellant's counter-arguments not be admitted into the appeal proceedings.

Further objection (i) was directed against the requirement in claim 1 that the hose comprised an inner tube "forming" an impermeable barrier layer. This was a substantive change to the originally disclosed content of paragraphs [0077], [0078] and [0079] of the application as filed, which referred to a barrier layer "comprising" an inner tube. It followed from paragraphs [0011] and [0012] of the application as filed that the invention was not directed to an inner tube, but to a barrier layer. This barrier layer was a general concept incorporating an inner tube as one of its components. The disclosure in paragraph [0078] of the application as filed that the inner tube was gas impermeable did not imply that the inner tube and the barrier layer were disclosed as conceptually identical. Rather, a metal tape or metallic coating could be applied to the

core to make it gas impermeable. The same applied to the disclosure in paragraph [0079] of the application as filed. A distinction had to be made between the function of the inner tube 702 as the operative core and the function of the barrier layer as the structure which provided the gas barrier and enclosed the inner tube 702. The amendments did not have basis either in Figures 13A and 13B of the application as filed, as these were not a suitable source of disclosure of such features. The metal barrier layer mentioned in paragraph [0089] of the application as filed was disclosed together with further features that were missing from claim 1.

Further objection (ii) was directed against the omission in claim 1 of the requirement disclosed in paragraphs [0077] to [0079] of the application as filed that the inner tube was configured to prevent the ingress of other gases and of moisture. By explicitly distinguishing between oxygen and other gases in the application as filed, the appellant had already recognised that these were different features. Gas-tightness was not an absolute but a relative property. From a technical standpoint, permeability was not a binary attribute of a material. Rather, it varied as a function of the specific material type, such as the various grades of stainless steel known in the art, and other relevant parameters. Hydrogen permeation through austenitic stainless steels, for example, had long been the subject of material science investigations. Furthermore, the simplistic assumption that a corrugated stainless steel inner tube with a complex geometry and locally altered stress conditions would necessarily behave in the same way towards all gases was untenable.

Further objection (iii) concerned the additional requirements disclosed in paragraph [0080] of the application as filed that the inner tube 702 was reinforced by the structural layer 704 which was disposed about the exterior of the inner tube. The at least one structural layer of feature 1.4 of claim 1 by no means possessed an inherent reinforcing property. In contrast, it was sufficient that the structural layer was configured to withstand an undefined fluid pressure. The pressure could, for example, be slightly greater than zero. Claim 1 therefore readily encompassed, for example, an embodiment in which no additional reinforcement was provided to the inner tube, but rather only to the outer covering. Furthermore, claim 1 did not specify the relative position of the structural layer. It could be arranged on an intermediate layer disposed about the inner tube or on the inside of the inner tube. The structural layer might even be formed by the inner tube itself.

Further objection (iv) concerned feature 1.5 which now included an insulation sublayer and a protection sublayer. However, paragraph [0083] of the application as filed only disclosed an insulation sublayer that served to control heat loss and a protection sublayer that served to protect the hose and other inner component/layers from damage caused by physical abuse. Therefore, claim 1 also covered embodiments in which the insulation layer would electrically insulate, for example, the electrically operated heater, or in which the protective sublayer protected the inner conduit against chemical or biological damage, neither of which were part of the original disclosure. The protective sublayer could even protect the surrounding area of the hose, including operators, maintenance staff and adjacent plant areas, for example against antistatic or

electrical effects. Claim 1 of auxiliary request 5c was not based on a combination of the original claims 1 and 5. It was not permitted to pick individual features from original claim 5 which related to a completely different embodiment than that incorporated into claim 1 of auxiliary request 5c.

Further objection (v) concerned the wording "at least one structural layer (704, 705)" in feature 1.4 in combination with the requirement of feature 1.5 that the heating tape sublayer was in contact with "an outer surface of the structural layer (704, 705)". As a consequence, claim 1 also covered the embodiment of Figures 14A and 14B, in which the outer covering was in contact with the outer of two overlapping structural layers. However, there was no basis in paragraphs [0083] and [0084] of the application as filed for a contact with the second structural layer 705.

Further objection (vi) was directed against the combination of "heater" and "heating tape sublayer" in claim 1. To the extent that the appellant considered these components of the hose to be identical, or at least that the heater comprised the heating tape sublayer, there was no basis in the application as filed. Although original claims 1 and 5 disclosed them in combination, further features had been added to the claim, which only had basis in the description of the application as filed.

(c) Request for remittal

At this stage, the case should be remitted to the opposition division for further prosecution including discussion of Articles 84 and 83 EPC. The further

prosecution should be limited to the claim request that was considered to comply with Article 123(2) EPC.

(d) Clarity

A first clarity objection arose in view of the relationship in claim 1 between the heater and the heating tape sublayer. The skilled person could not derive from the wording of claim 1 whether the heating tape sublayer was part of, identical to, or additional to the heater. This objection had initially been raised in respondent II's reply to the statement of grounds of appeal, in the context of auxiliary request 5. The relationship between the heater and the heating tape sublayer was not excluded from being examined for clarity simply because similar wording was included in dependent claim 6 of the patent as granted. Claim 1 of auxiliary request 5c was not a simple combination of granted claims, but included features taken from paragraphs [0076] to [0089] of the original description.

Secondly, the expression "operative core of the hose" introduced into feature 1.2 of claim 1 lacked clarity, since it was not apparent which technical property rendered the flexible metal inner tube an operative core. If it were intended that the inner surface of the inner tube defined the cavity through which the adhesive flowed, then the embodiment shown in Figures 15A and 15B of the patent would fall outside the scope of claim 1, since in that embodiment it was the liner 710 - not the inner surface of the inner tube - that defined the cavity. This objection had initially been raised in respondent II's reply to the statement of grounds of appeal, in the context of auxiliary request 1.

Thirdly, feature 1.5 had been amended by specifying that the outer covering had a multi-layered structure. However, the feature subsequently referred to *the* outer covering *layer*. Given that a multi-layered structure could not consist of just one layer, the reference was a *contradictio in terminis*. This objection had initially been raised in respondent II's reply to the statement of grounds of appeal, in the context of auxiliary request 5.

Furthermore, the function of the heating tape sublayer "to provide uniform conduction heating to the hose" was not clear in view of the heater of feature 1.7. In particular, it was not clear how the heater alone would be able to maintain the temperature set point if, at the same time, a heating tape sublayer provided uniform conduction heating. The relationship between the heater and the heating tape sublayer was totally unclear. This argument merely elaborated on previous arguments; it did not present a new objection.

Reasons for the Decision

1. Format of the oral proceedings

1.1 Article 15a(1) RPBA provides that the board may decide to hold oral proceedings pursuant to Article 116 EPC by videoconference if the board considers it appropriate to do so, either upon request by a party or of its own motion. The decision on the format of the oral proceedings is, thus, at the board's discretion.

1.2 In the course of the written appeal proceedings, respondents I and II requested - and respondent III

agreed - that the oral proceedings be conducted in the form of a videoconference. In support of their request, the respondents argued that costs would be saved, that oral proceedings before the opposition division were also held by videoconference and that the videoconference setting allowed better access to case documents.

1.3 Unlike in appeal proceedings, oral proceedings before the Examining Divisions and Opposition Divisions are, as a rule, held by videoconference. Only in exceptional circumstances where there are serious reasons against holding the oral proceedings by videoconference, they may be held on the EPO premises, either at a party's request or at the instigation of the division (OJ EPO 2022, A103, OJ EPO 2022, A106). The fact that, in the present case, the oral proceedings before the opposition division were held in the form of a videoconference does, therefore, not necessarily demonstrate that the videoconference format would have been appropriate to discuss the subject-matter of the present case before the board.

1.4 Any purported advantage arising from screen size in a videoconference setting is not an objective characteristic of that format. It merely reflects a subjective preference and overlooks the diversity of established practices adopted by parties in both videoconference and in-person oral proceedings. Some representatives primarily rely on electronic documents and multiple-screen setups, whereas others continue to work extensively with paper files.

1.5 On balance, the board took all circumstances and arguments into account in the exercise of its discretion. However, in view of the complexity of the

appeal case involving four parties and a large number of auxiliary requests as well as a request for simultaneous interpretation, the board concluded that in-person proceedings was the appropriate format.

2. Main request (patent as granted)

2.1 During the proceedings before grant, claim 1 of the application as filed was amended *inter alia* by the addition of feature 1.5, which has the following wording.

> "[1.5] an outer covering (706) overlaying and in contact with an exterior surface of the at least one structural layer (704, 705), and"

2.2 It is the addition of this feature that led the opposition division to conclude that the subject-matter of claim 1 of the patent as granted extended beyond the content of the application a filed.

2.3 The appellant disputes this conclusion and essentially argues that the amendment has basis in Figures 13A to 15B and in paragraph [0084] of the application as filed.

2.4 Each of Figures 13A, 14A and 15A is a perspective view of a multi-layered hose having an inner tube 702, an intermediate layer 704 and an outer layer 706. Figure 14A is different in that the hose has a second intermediate layer 705. The hose of Figure 15A has an additional liner 710 arranged inside the inner tube. The inner tube 702 is represented as corrugated in these drawings. The intermediate layer 704 has an outer surface with a braided structure. Figures 13B, 14B and

15B show the end of the respective hoses in an orthographic projection.

2.5 The detailed description of Figures 13A to 15B starts in paragraph [0077] on page 19 of the application as filed and essentially goes as follows.

- The hot melt adhesive transfer hose 700 includes a barrier layer comprising an inner tube 702 configured to prevent the ingress of oxygen and other gases into the conduit of the hose (paragraph [0077]). The inner tube 702 forms of the operative core of the hose, is preferably made from a metallic material, is gas impermeable and, therefore, does not allow any air to diffuse into the conduit (paragraph [0078]). The inner tube 702 blocks moisture and can also keep gases within the hose from escaping (paragraph [0079]).
- The inner tube 702 has seamless corrugations to allow for flexibility, and preferably maintains a consistent tube wall thickness. It is reinforced by a structural layer 704 which is disposed about the exterior of the inner tube, serves to provide added strength and protection to the tube and may comprise a braided jacket of thermally stable material (paragraph [0080]).
- The structural layer 704 may include a braided jacket made of stainless steel. The hose can include a plurality of structural layers 704, 705 which may be overlapping (paragraph [0081]).
- Additionally, the hose may comprise a liner 710 provided on an inner surface of the inner tube 702 (paragraph [0082]).
- The hose may further comprise an outer covering 706 which may be a multi-layered structure having a heating tape sublayer, an insulation sublayer, and/or a protective sublayer, which are not shown. The

heating tape serves to provide uniform conduction heating to the hose. The insulation layer serves to control heat loss and may also improve chemical and moisture resistance. The protective layer principally serves to protect the hose and other inner component/layers from damage caused by physical abuse (paragraph [0083]).

- Each layer of the outer covering is a separate and distinct layer. For instance, the heating sublayer is in contact with an outer surface of the structural layer 704 and covered by the insulation sublayer which, in turn, is covered by the protective sublayer (paragraph [0084]).
- The inner tube 702, the structural layer 704 and/or the heat tape sublayer of the outer covering 706 are in the hot zone. The outer surface of the insulation or the protective sublayers are outside the hot zone (paragraph [0085]).
- The hose 700 may be operatively coupled to a dispenser and to a source of liquid hot melt adhesive (paragraph [0086]).
- The hose can further include a heater for maintaining the hot melt adhesive at a set point. The heater can include at least one heating wire comprising metal. The heating wire may either circumferentially wrap around an exterior surface of the inner core of the hose or it is provided on an exterior surface of the inner core in a direction parallel to the longitudinal axis of the inner core (paragraph [0087]).
- A sensor can be provided on the heater or within the hose (paragraph [0088]).

2.6 Based on these passages of the application as filed, there is a direct and unambiguous disclosure in the application as filed of an outer covering overlaying

and in contact with an exterior surface of the structural layer. However, the contact is only disclosed in respect of a heating tape sublayer of a specific multi-layered outer covering, i.e. one that further comprises an insulation sublayer covering the heating tape sublayer and a protective sublayer covering the insulation sublayer. Moreover, these features are disclosed only in combination with an inner tube having seamless corrugations. The addition of feature 1.5 to claim 1 of the application as filed without including at least these further features thus unduly generalises the original disclosure.

2.7 The appellant's argument that the multi-layered structure of the outer covering was described as optional in paragraph [0083] of the application as filed overlooks that also the outer covering, which was not part of the hose of original claim 1, is described as optional in the application as filed. However, it is only in the context of a multi-layered outer covering that paragraph [0084] of the application as filed discloses the contact between the outer covering and the outer surface of the structural layer.

2.8 Also the argument that feature 1.5 directly followed from Figures 13A to 15B of the application as filed, none of which showed an outer covering with a multi-layered structure, is not convincing. In the board's view, a correct understanding of the drawings is only possible against the background of paragraphs [0042], [0044], [0046] and [0049] of the application as filed. Accordingly, the mere absence of a gap between the outer covering and the structural layer in the "schematic view" of each of Figures 13A to 15B, which are "not necessarily drawn to scale" and "are not intended to be limiting in scope, but rather to provide

exemplary illustrations", does not necessarily imply that there is contact between the layers in the general formulation of feature 1.5. To substantiate the schematic character of the drawings, the opposition division already drew the attention to the fractional depiction of the braid structure of the structural layer 704. The board adds that the corrugations of the inner tube 702 are not properly represented in the end views of Figures 13B, 14B and 15B. Furthermore, there is no indication whatsoever that the hose shown by the drawings comprises a heater despite its mention in claim 1 of the application as filed. It can therefore not be ruled out that some of the details of the transfer hose are either incompletely represented in Figures 13A to 15B or alltogether missing from the drawings. In view thereof, the drawings of the application as filed do not permit to draw any conclusions as to whether the outer covering is actually in contact or not with the structural layer. This is in line with established case law that the mere absence of a feature in the representation given by a patent drawing does not make it unequivocally inferable that such a feature is to be excluded (see, for example, T 170/87, Reasons 8.3; T 410/91, Reasons 2.1; T 352/05, Reasons 2; T 204/22, Reasons 2.8.6).

2.9 The fact that paragraph [0058] of the application as filed describes various layers of the transfer hose 200 as being in contact with an adjacent layer does not change the above conclusion, since that paragraph is part of the detailed description of another embodiment. Unlike the embodiment of Figures 13A to 15B and contrary to feature 1.3 of claim 1 of the patent as granted, the inner tube 102 and the barrier layer 203 of the hoses 200 shown in Figures 2A to 5B of the application as filed are distinct components. Already

for that reason, paragraph [0058] cannot form a basis for the amendment under consideration. But even if one were to assume *arguendo* that the representations of the hose in Figures 2A to 5B are similar, at least to a certain extent, to those of Figures 13A to 15B so that common elements can be found in their respective description, it is worth noting that none of the other layers of the hoses shown in Figures 2A to 5B is described as being in contact with an adjacent layer. In fact, the explicit mention of a contact between the barrier layer 203 and one of an inner surface of the inner tube 102, an outer surface of the inner tube 102, an outer surface of the structural layer 104 or an outer surface of the outer covering 106 in paragraph [0058] actually raises doubts as to whether the other layers, for example the outer covering 106 and the structural layer 104 of the examples shown in Figures 2A to 3B, are in mutual contact.

2.10 In view of the above considerations, it must be concluded that claim 1 of the patent as granted has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. The opposition division was, therefore, correct in its finding that the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted. The main request is not allowable.

3. Auxiliary requests 1 to 5

3.1 Since claim 1 of none of auxiliary requests 1 to 5 specifies the multi-layered structure of the outer covering together with the requirement that a heating tape sublayer is in contact with an outer surface of

the structural layer, the objection raised in the context of the main request has not been overcome.

3.2 The opposition division was, therefore, correct in its finding that the requirements of Article 123(2) EPC are not met. Auxiliary requests 1 to 5 are not allowable.

4. Auxiliary request 5a

4.1 The opposition division considered that, in claim 1 of auxiliary request 5a, there was no basis in the application as filed for the amendment to feature 1.5

> "wherein the heating tape sublayer or heating wire sublayer is in contact with an outer surface of the structural layer (704, 705)"

in combination with the heater of feature 1.6.

4.2 As set out in points 2.5 and 2.6 above, it is only in paragraph [0084] of the application as filed that a contact between two layers is disclosed in the context of the embodiment shown in Figures 13A to 15B, namely between the heating tape sublayer of the multi-layered outer covering 706 and an outer surface of the structural layer 704. The paragraph does not contain any reference to a heating wire sublayer.

4.3 A heating wire is mentioned in paragraph [0087] of the application as filed (see point 2.5 above). However, it is described as part of a heater which, because of the specific wording used ("the transfer hose can further include a heater"), is understood as being a *further* component of the hose, i.e. additional to the components already disclosed in the previous

paragraphs, such as the inner tube, the structural layer and the multi-layered outer covering. It cannot be inferred from that paragraph that the heater is, as the appellant argues, "a (superordinate) functional unit" which is realised either as a heating tape sublayer or, in an alternative embodiment, as a heating wire, let alone that the relative arrangement of paragraph [0084] would extend to both variants. A further indication to this effect can be found in the fact that paragraph [0087] describes the heating wire as being wrapped around or provided on an exterior surface of the inner core of the hose. When read in the context of paragraph [0078] of the application as filed, the term "inner core" denotes the inner tube *per se*, rather than the composite structure including the structural layer 704. Consequently, the heating wire would be in contact with an outer surface of the inner tube 702, but not with an outer surface of the structural layer 704.

4.4 By the same token, the terminology used in claim 5 of the application as filed ("[t]he hose of claim 1, further comprising") precludes an interpretation in which the heater encompasses at least the heating tape sublayer as a subunit of a superordinate functional unit. Instead, it implies that the hose includes a multi-layered outer covering layer, comprising, *inter alia*, a heating tape sublayer, in addition to the features already defined by claim 1, such as the heater.

4.5 The appellant also refers to paragraph [0015] of the application as filed in support of its argument that the heating tape and heating wire sublayers were alternative subunits of the heater. Following this passage of the 'Summary' of the invention, a heating

wire sublayer is part of the outer covering layer as an alternative to the heating tape sublayer. It does not mention the heater, however, which is only mentioned in paragraph [0012] of the 'Summary' without any apparent link to the heating tape or wire sublayers. Nor does the general description in paragraphs [0012] to [0023] of the application as filed disclose an arrangement of one of the heating tape sublayer or heating wire sublayer "in contact with" an outer surface of the structural layer; that specific disclosure is found exclusively in paragraph [0084] of the 'Detailed Description' and only in relation to the heating tape sublayer. Nothing suggests that the latter can be replaced by a heating wire sublayer in view of the general disclosure of paragraph [0015].

4.6 Having regard to the above considerations, it must be concluded that there is no direct and unambiguous disclosure of the above amendment to feature 1.5 in the application as filed. Hence, the requirements of Article 123(2) EPC are not met. Auxiliary request 5a is not allowable.

5. Auxiliary request 5b

5.1 The claims of auxiliary request 5b were filed during the oral proceedings held before the opposition division. The opposition division did not admit auxiliary request 5b into the proceedings because it found, in a *prima facie* assessment, that not all of the issues identified in the context of auxiliary request 5a had been solved by the amendments to claim 1. In particular, the amendment in feature 1.6 that "a heater including a heating tape, wherein the heating tape forms the heating tape sublayer" was not found to have

a basis in the application as filed (see point 5 of the reasons for the decision under appeal).

5.2 The board is satisfied that the opposition division exercised its discretion according to the right principles and not in an arbitrary manner (see G 7/93, OJ 1994, 775, Reasons 2.6, and T 640/91). This was not disputed by the appellant, who took issue with the merits of the assessment under Article 123(2) EPC.

5.3 Based on the conclusion arrived at in the context of auxiliary request 5a above, the board does not see how the amendment to feature 1.6 could overcome the objection under Article 123(2) EPC. If a heater is not disclosed in the application as filed as being implemented in the form of a heating tape sublayer but rather as a further component of the hose in addition to the multi-layered outer covering, then there can be no basis for a heater *including* a heating tape, wherein the heating tape forms the heating tape sublayer.

5.4 In view thereof, the board did not see any reason to overrule the discretionary decision of the opposition division and to admit auxiliary request 5b into the appeal proceedings pursuant to Article 12(6), first sentence RPBA.

6. Auxiliary request 5c

6.1 The claims of auxiliary request 5c were filed for the first time with the statement of grounds of appeal. Respondents I and II requested not to admit auxiliary request 5c into the appeal proceedings, arguing that the claims of auxiliary request 5c could have already been filed in the proceedings before the opposition

division and that the request was not *prima facie* allowable.

(a) Admittance

6.2 The applicable legal provision for deciding on the admittance of auxiliary request 5c is Article 12(6), second sentence RPBA and not, as argued by respondent I, Article 13(2) RPBA. In section L (page 105 ff.) of the statement of grounds of appeal, the appellant identified the amendments made in claim 1 of auxiliary request 5c and indicated why these amendments addressed the objections raised by the opposition division against some of the higher-ranking requests. Referring to section K (page 103 ff.) of the statement of grounds of appeal, the appellant also put forward reasons why auxiliary request 5c could not have been filed at an earlier stage. Accordingly, respondent I's contention that auxiliary request 5c was not properly substantiated in the statement of grounds of appeal and, hence, that it was not effectively filed therewith is not persuasive.

6.3 Following Article 12(6), second sentence RPBA, the board must not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

6.4 To correctly assess whether the claims of auxiliary request 5c should have been submitted in the proceedings before the opposition division it is necessary to take a closer look at the file history.

6.4.1 In the communication issued in preparation for the oral proceedings, the opposition division set out its preliminary opinion that there was basis in the application as filed for the addition of feature 1.5 but not for the amendments in features 1.2 and 1.3 of claim 1 of the patent as granted (points 7.4.1.3, 7.4.2.5 and 7.5 of the communication). In the context of the then auxiliary request 1, the opposition division remarked that the feature "a heater including said heating tape sublayer" did not have a basis in the application as filed since it did not disclose any relationship between the heater and the heating tape sublayer (point 10.1.2.1 of the communication).

6.4.2 At the oral proceedings, the opposition division changed its view on feature 1.5 and concluded that the amendments to claim 1 of the patent as granted extended beyond the content of the application as filed. Following point 7.1 of the minutes, the chairman pointed out that the wording "in contact with" only had basis in paragraph [0084] of the application as filed in combination with an outer covering including a heating tape sublayer.

6.4.3 In response thereto, the appellant filed nine sets of claims during the oral proceedings, including the claims of auxiliary request 5a (point 7.11 of the minutes). After having concluded that auxiliary requests 1 to 36 filed in the written proceedings were not allowable under Article 123(2) EPC, the opposition division admitted auxiliary request 5a into the proceedings (points 8 and 9.10 of the minutes) and subsequently decided that the amendments to claim 1 of auxiliary request 5a did not meet the requirements of Article 123(2) EPC since "there is no direct and unambiguous disclosure of: (i) the heating wire

sublayer being in contact with the structural layer; and (ii) the relationship between the heating tape / wire and the heater" (point 9.16 of the minutes). The chairman of the opposition division also indicated that claim 1 of auxiliary request 5a did not define that each sublayer was "separate and distinct", nor that the heating tape provided "uniform conduction heating to the hot melt adhesive hose".

6.4.4 At that point in the oral proceedings, the appellant filed a further set of claims of auxiliary request 5b in which all references to the heating wire sublayer were deleted, the requirements of "separate and distinct" sublayers and of "uniform conduction heating to the hose" were added, and the heating tape was defined as part of the heater. After discussion, the chairman announced that auxiliary request 5b was not admitted as it was not *prima facie* allowable in view of Article 123(2) EPC (point 10.7 of the minutes). Also the eight auxiliary requests filed during the oral proceedings together with auxiliary request 5a were not admitted.

6.4.5 In point 3 of the reasons for the decision under appeal, the opposition division explained that it had admitted auxiliary request 5a because "it was filed as a reaction to the change of mind of the opposition division, only announced at the beginning of the oral proceedings". As regards the reason for finding the request unallowable, the opposition division considered that there was "no basis in the application as filed for "*a heating tape sublayer or heating wire sublayer in contact with an outer surface of the structural layer*" in combination with a heater" (point 4.1 of the reasons), that there was "no direct and unambiguous disclosure [...] with respect to the relationship

between the heating tape sublayer and the heater" (point 4.1.1 of the reasons), that "the relationship between the heater and a heating tape sublayer or heating wire sublayer comprised in the outer covering [was] not defined at all in the original application" (point 4.1.3 of the reasons), and that "[i]t appears that the heater is not to be identified with the heating tape sublayer [...] it appears technically incongruous to install two different heating elements in the same hose [...] [t]he opposition division can only speculate that the heater as defined in paragraph [0087] might be only foreseen for hoses that do not comprise any other heating element, i.e. a heating tape sublayer" (point 4.1.6 of the reasons). By way of obiter dictum, the opposition division added in point 4.5 of the reasons that it could not see any solution to the objection set forth in point 4.1.

6.4.6 Regarding the reason for not admitting auxiliary request 5b, the opposition division held in point 5 of the reasons for the decision under appeal that, already in a *prima facie* assessment, it became clear that the amendments did not solve the issue raised in point 4.1 in the context of auxiliary request 5a, which, in its opinion, was "insurmountable". The opposition division added that, in particular, the feature "a heater including a heating tape, wherein the heating tape forms the heating tape sublayer" did not have a basis in the original application. Reference was also made to point 10.1.2.1 of the opposition division's communication issued in preparation for the oral proceedings.

6.5 Given that the appellant was afforded the opportunity to file, firstly, the claims of auxiliary request 5a

and of eight further auxiliary requests and, subsequently, the claims of auxiliary request 5b, the board is in agreement with respondents I and II that also the claims of auxiliary request 5c *could* have been filed on either of those occasions during the oral proceedings.

6.6 Nevertheless, it should be borne in mind that the auxiliary requests filed at the oral proceedings were triggered by the opposition division's change in view on the allowability of the amendments to feature 1.5. Upon learning from the opposition division that the wording "in contact with" had a basis only in relation to an outer covering comprising a heating tape sublayer, the appellant sought to address this issue by filing nine sets of claims, essentially mirroring the wording of previously filed claim sets with the sole addition that the outer covering comprised either a heating tape sublayer or a heating wire sublayer in contact with an outer surface of the structural layer. It was only after auxiliary request 5a had been admitted by the opposition division that the appellant was made aware that one of the impediments to compliance with Article 123(2) EPC was the lack of a direct and unambiguous disclosure in the application as filed in respect of the relationship between "the heating tape / wire and the heater", and this despite the fact that claim 1 of auxiliary request 5 had already included both a heating tape sublayer and a heater. While the opposition division had objected to the relationship between the heater and the heating tape sublayer in its communication issued in preparation for the oral proceedings, in the context of the then auxiliary request 1, that objection cannot simply be carried over to claim 1 of auxiliary request 5a, since the latter merely recites the presence of a

heating tape or wire sublayer and a heater, without specifying any relationship between those elements. This was different for claim 1 of auxiliary request 5b, which 're-introduced' an explicit relationship between the heater and the heating tape sublayer in amended feature 1.6 and was, therefore, held *prima facie* unallowable by the opposition division. To the extent that the rejection of auxiliary request 5a was predicated on the opposition division's view that it would be technically incongruous to install two different heating elements in the same hose, that objection concerned considerations of lack of clarity rather than compliance with Article 123(2) EPC. In any event, this reasoning was articulated only in the written decision effectively leaving the appellant with no opportunity to comment on it beforehand.

6.7 In view of the above, the board concludes that the circumstances of the appeal case justify admitting auxiliary request 5c into the proceedings (Article 12(6), second sentence RPBA).

(b) Allowability of the amendments (Article 123(2) EPC)

6.8 Claim 1 of auxiliary request 5c defines a multi-layered hot melt adhesive transfer hose comprising, in addition to features 1.1 to 1.7 of claim 1 of the patent as granted, the following limitations:

- the hose is for transfer of hot melt adhesive,
- the flexible metal inner tube forms a conduit,
- the flexible metal inner tube forms the operative core of the hose through which the molten hot melt adhesive flows,
- the flexible metal inner tube is made from stainless steel,

- the flexible metal inner tube comprises a plurality of seamless corrugations,
- the outer covering has a multi-layered structure, comprising a heating tape sublayer, an insulation sublayer, and a protective sublayer,
- each sublayer of the outer covering is a separate and distinct layer,
- the heating tape sublayer is in contact with an outer surface of the structural layer and is covered by the insulation sublayer, wherein the protective sublayer covers the insulation sublayer,
- the heating tape serves to provide uniform conduction heating to the hose.

6.9 Because of these limitations, the issues identified in point 2.6 above, in the context of the main request, have been overcome. Furthermore, in the absence of any reference to a heating wire, the objections raised in point 4. above, in the context of auxiliary request 5a, are no longer pertinent.

6.10 Respondents I and II raised six further objections of added matter against claim 1 of auxiliary request 5c. They essentially argue that the embodiment of Figures 13A to 15B of the application as filed further includes following features which are missing from claim 1 (see also point 2.5 above).

(i) The barrier layer *comprises* the inner tube 702 (paragraph [0077]).

(ii) The inner tube 702 is not only configured to prevent the ingress of oxygen, but also of other gases (paragraph [0077]) and of moisture (paragraph [0079]).

(iii) The structural layer 704 reinforces the inner tube 702 and is disposed about the

exterior of the inner tube (paragraph [0080]).

(iv) The insulation sublayer serves to control heat loss and the protective sublayer serves to protect the hose and other inner component/layers from damage caused by physical abuse (paragraph [0083]).

Furthermore, respondents I and II argue that there is no basis in the application as filed for

(v) a heating tape sublayer in contact with second structural layer 705 of Figures 14A and 14B,

(vi) a heater in combination with a heating tape sublayer if these were considered to be identical.

6.11 All six further objections were raised in the respondents' replies to the statement of grounds of appeal, albeit primarily against higher-ranking requests (see pages 8 and 12 of respondent I's reply and pages 10 to 12, 15, 53, 56, 57, 60, 61 and 62 of respondent II's reply). However, the board is satisfied that, through the cross-references on page 103 of respondent I's reply to their previous submissions and on page 63 of respondent II's reply to the objections raised against auxiliary request 5b, the further objections were also effectively raised against auxiliary request 5c.

6.12 The appellant presented counter-arguments to the further objections (i) to (iv) by letter dated 12 March 2026. These were taken into account by the board for the discussion on Article 123(2) EPC, notwithstanding respondent II's request to the contrary. It was

legitimate for the appellant to present counter-arguments in writing as to why the passages of the application as filed already referred to in the statement of grounds of appeal in their view provided a basis for the amendments in auxiliary request 5c.

6.13 Regarding further objection (i), the board concurs with the appellant that paragraphs [0077] to [0080] and Figures 13A and 13B of the application as filed are consistent in that the inner tube 702 of the embodiment under scrutiny actually corresponds to the barrier layer. Despite the reference in paragraph [0078] to what appears to be an alternative embodiment, in which the barrier layer is formed by a metallic coating applied to the hose core, it is nevertheless the metal inner tube that is described as being "gas impermeable" and as "not allow[ing] any air to diffuse into the conduit". This view is further supported by the reference in paragraph [0089] of the application as filed to "the metallic barrier layer 702". Hence, there is basis in the application as filed for amendment in features 1.2 and 1.3 of claim 1 "a flexible metal inner tube [...] forming an impermeable barrier layer".

6.14 In the application as filed, the function of the barrier layer is disclosed not only as preventing the ingress of oxygen, but also as preventing the ingress of other gases (paragraph [0077] and [0078]) and as blocking moisture (paragraph [0079]). Claim 1 of auxiliary request 5c does not explicitly specify these additional functions. Nevertheless, further objection (ii) is rejected as unconvincing. The material of the inner tube forming the barrier layer is restricted by claim 1 of auxiliary request 5c to stainless steel. As the appellant convincingly argues, a stainless steel barrier layer would be inherently impermeable to gases

and moisture. While hydrogen gas may permeate certain stainless steel grades under specific operating conditions, adhesive transfer hoses are not typically exposed to hydrogen-containing environments, let alone to the specific operating conditions referred to by the respondents. Further considering that the underlying problem of the invention is to prevent discoloration or charring (see paragraphs [0006] to [0011], [0019], [0050], [0051], [0077], [0078], [0089] to [0092] of the application as filed), the board considers that the term "other gases" in paragraphs [0077] and [0078] would be understood by the skilled person as referring to air or other oxidising gases capable of causing such discoloration and charring, and not to, for example, hydrogen gas. Accordingly, the omission of the phrases "to prevent the ingress from other gases" and "to block moisture" does not add subject-matter extending beyond the content of the application as filed.

6.15 Claim 1 is formulated in such a way that the at least one structural layer of feature 1.4 is necessarily arranged in an intermediate position between the inner tube and the outer covering. Owing to its configuration to withstand fluid pressure, the structural layer must contribute additional mechanical strength to the inner tube conveying the adhesive fluid. The board is not persuaded by the respondents' argument that, under claim 1, the structural layer need only withstand an unspecified fluid pressure, for example a pressure marginally exceeding zero which would not impart any reinforcement, as such an interpretation is not technically credible. Likewise, the suggestion that the structural layer serves to reinforce the outer covering rather than the inner tube cannot be accepted, since the outer covering is not exposed to the pressure of the conveyed fluid. The skilled person reading claim 1

would instead understand the structural layer as providing reinforcement to the inner tube subjected to internal fluid pressure. The additional requirements disclosed in paragraph [0080] of the application as filed are, therefore, implied by the wording of claim 1 so that further objection (iii) is not convincing.

6.16 Amended feature 1.5 of claim 1 defines the outer covering in terms of its sublayers and their relative position from the inside to the outside, in the following order: a heating tape sublayer, an insulation sublayer and a protective sublayer. The respondents' further objection (iv) is that claim 1 does not assign any particular function to the insulation and protective sublayers, contrary to the express disclosure in paragraph [0083] of the application as filed. The board disagrees. Given that the insulation sublayer covers the heating tape sublayer and that the heating tape sublayer serves to provide uniform conduction heating to the hose, the skilled person would understand the insulation layer as necessarily serving a thermal insulation function, i.e. controlling heat loss from the heating tape sublayer. Similarly, by virtue of its position on the outside of the hose, the protective sublayer serves to protect the hose - including all its components - from damage caused by external physical interaction. Even if, as the respondents argue, it were assumed that the protective sublayer shield the inner conduit from chemical or biological damage and the surrounding area from antistatic or electrical effects, the outermost layer of the outer covering nevertheless *principally* serves a protection against damage. The particular functions of the insulation and protective sublayers, as disclosed in paragraph [0083] of the application as filed are, therefore, implicit from the wording of claim 1.

6.17 The embodiment illustrated in Figures 14A and 14B differs from that of Figures 13A and 13B in that two overlapping structural layers 704, 705, rather than a single layer, are arranged between the inner tube 702 and the outer covering 706. The appellant convincingly argues that, where the hose comprises more than one structural layer, the heating tape sublayer must necessarily be in contact with the outermost of these structural layers. The fact that paragraph [0084] only mentions a structural layer with reference sign 704 does not lead to a different conclusion, all the more so since paragraph [0081] refers to "a plurality of structural layers 704" without including reference sign 705. Thus, further objection (v) is not convincing.

6.18 In points 4.3, 4.4 and 5.3 above, the board expressed its view that claim 1 must be understood in the sense that the heater is a further component of the transfer hose, in addition to the flexible metal inner tube, the at least one structural layer and the multi-layered outer covering. It cannot, therefore, be inferred that the heater constitutes a (superordinate) functional component implemented in the form of the heating tape sublayer of the outer covering. Consequently, further objection (vi), which is based on such a relationship between heater and heating tape sublayer, is without merit.

6.19 Having regard to the above considerations, the board concludes that the requirements of Article 123(2) EPC are met.

(c) Request for remittal

6.20 In the oral proceedings held before the board, the respondents requested that the case be remitted to the opposition division for further prosecution including discussion of Articles 84 and 83 EPC. The appellant also requested a remittal, but only in case one of the claim requests was found to comply with Article 123(2) EPC and Article 84 EPC, i.e. once it had been established that the requirements of both articles had been met.

6.21 Under Article 111(1), second sentence EPC the board has discretion over whether to exercise any power within the competence of the department which was responsible for the decision appealed or to remit the case to that department for further prosecution. In accordance with Article 11 RPBA, the board shall not remit a case unless special reasons present themselves for doing so.

6.22 In the decision under appeal, the opposition division did not take position on any of the objections of lack of novelty, lack of inventive step and insufficient disclosure raised by the respondents in the proceedings before it. The reasons for the decision under appeal were confined to an assessment of added subject-matter under Article 100(c) and Article 123(2) EPC. This speaks in favour of remitting the case to the opposition division for further prosecution.

6.23 It must nevertheless be considered that the respondents also raised several clarity objections against claim 1 of auxiliary request 5c. Establishing on appeal whether the claims are clear before remitting for a discussion on the patentability requirements would certainly serve the purpose of procedural economy. The board is also

particularly mindful that the (lack of a) relationship between the heater and the heating tape sublayer was already one of the core issues under Article 123(2) EPC which the opposition division had addressed in the decision under appeal also from the perspective of clarity (see points 6.4.5 and 6.6 above).

6.24 In view of the above considerations, the board found it expedient and reasonable to use the discretion conferred on it under Article 111(1) EPC and Article 11 RPBA to examine and rule itself on the clarity objections raised by the respondents.

(d) Clarity (Article 84 EPC)

6.25 The Enlarged Board in decision G 3/14 (OJ EPO 2015, 102, Reasons 81) held that, in considering whether, for the purposes of Article 101(3) EPC, a patent as amended meets the requirements of the EPC, the claims of the patent may be examined for compliance with the requirements of Article 84 EPC only when, and then only to the extent that, the amendment introduces non-compliance with Article 84 EPC.

6.26 Claim 6 of the patent as granted refers immediately back to independent claim 1. Therefore, the granted claims are already directed to a transfer hose comprising a heater for maintaining the holt melt adhesive in combination with a multilayered outer covering comprising *inter alia* a heating tape sublayer. Accordingly, if the lack of a defined relationship between the heater and the heating tape sublayer gives rise to an ambiguity, that same ambiguity must already have existed in the granted claims, despite the addition of additional features taken from the description of the application as filed. Following

decision G 3/14, claim 1 can, therefore, not be examined for compliance with the requirements of Article 84 EPC in respect of the relationship between the heater and the heating tape sublayer.

6.27 Regarding the second clarity objection raised by the respondents, the board shares the appellant's view that the flexible metal inner tube and the expression "operative core of the hose" both refer to the same component of the claimed transfer hose. This follows not only from the wording of claim 1 ("said flexible metal inner tube (702) forming the operative core of the hose (700)"), but also from paragraph [0051] of the patent. If a liner 710 is provided on the inner surface of the inner tube 702, as in the embodiment shown in Figures 15A and 15B, then the liner 710 is also provided on the inner surface of the operative core of the hose. No lack of clarity can be seen in this respect.

6.28 The respondents' third clarity objection concerns the conjoint use of the term "outer covering" as a multi-layered structure and the term "outer covering layer" in amended feature 1.5 of claim 1. However, both terms already appear in the same context in claim 6 of the patent as granted. Amending granted claim 1 by incorporating the additional feature of claim 6 did not *introduce* a non-compliance with Article 84 EPC in this respect. Accordingly, this feature is not open to examination under Article 84 EPC (decision G 3/14).

6.29 During the oral proceedings held before the board, the respondents raised a further clarity issue concerning the function of the heating tape sublayer "to provide uniform conduction heating to the hose" in the presence of a heater defined in feature 1.7. In agreement with

the appellant, the board considered that this was a new objection, not merely a refinement of an existing argument, which was brought for the first time at a very late stage, namely at the end of the oral proceedings. As the respondents did not present any cogent reasons that could justify exceptional circumstances, the board did not take the late-filed objection into account, pursuant to Article 13(2) RPBA.

6.30 In sum, the claims of auxiliary request 5c meet the requirements of Article 84 EPC, as far as these requirements could be examined in light of decision G 3/14.

7. Remittal

7.1 The board agrees with the parties that the case should be remitted to the opposition division for further prosecution.

7.2 It does not, however, see any legal basis for respondent II's additional request that the further prosecution be limited to the claim request that was considered to comply with Article 123(2) EPC, which in the present case would be auxiliary request 5c.

7.3 The EPC contains no restrictions on the scope of examination following the remittal of a case by the board beyond those set out in Article 111(2) EPC (T 1092/23, Reasons 1.8). This provision stipulates that, if the board remits a case of further prosecution to the department whose decision was appealed, that department is bound by the ratio decidendi of the board, in so far as the facts are the same. Findings of fact on which the board's decision rests are, thus, not

open to reconsideration (T 843/91 of 5 August 1993, Reasons 3.4.2). In opposition proceedings following the remittal for further prosecution, however, the factual basis underlying a decision on appeal may subsequently change, not only by the identification of further prior art, but also through amendments to the patent claims. Such amendments are not precluded by the binding effect of Article 111(2) EPC, provided that they do not contravene the ratio decidendi of the remitting decision (T 27/94, Reasons 2 and 2.3; T 609/94, Reasons 2.1 and 2.2; T 1630/08, Reasons 2.3.1).

7.4 That is not to say that a patent proprietor should be free to redefine the claimed invention after remittal and have the opposition division examine any subject-matter that was not already settled by the appeal (T 383/11, Reasons 1.4; T 1238/22, Reasons 1.3.3). Further prosecution of a case after remittal should, as a rule, build upon the situation that existed at the end of the appeal proceedings that led to the remittal (T 383/11, Reasons 1.4; T 2194/22, Reasons 2.3.3; T 781/24, Reasons 2.8.4). As was the case prior to the appeal proceedings resulting in the remittal, the opposition division has discretion to admit amended requests (Article 123(1) EPC, Rule 81(3) EPC) and may do so in application of established criteria, such as *prima facie* allowability, complexity of the amendments, procedural economy, the stage of the proceedings, and whether the amendments constitute a legitimate response to new developments in the proceedings (T 1092/23, Reasons 1.10 and 1.12). Confining the further prosecution of a case after remittal to a particular claim request would, in effect, fetter that discretion thereby contravening the EPC.

7.5 In view of the above, it was decided to remit the case to the opposition division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division for further prosecution.

The Registrar: The Chairman:

N. Schneider P. Lanz

Decision electronically authenticated