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**Datasheet for the decision
of 9 March 2026**

Case Number: T 1208/24 - 3.2.07

Application Number: 15767302.1

Publication Number: 3188986

IPC: B65D85/10

Language of the proceedings: EN

Title of invention:
PACKET OF SMOKE ARTICLES

Patent Proprietor:
G.D S.p.A.

Opponent:
Focke & Co. (GmbH & Co. KG)

Headword:

Relevant legal provisions:
EPC Art. 54, 84
RPBA 2020 Art. 11

Keyword:

Novelty - (no)

Claims - clarity after amendment (no)

Remittal - special reasons for remittal (no)

Prohibition of reformatio in peius

Decisions cited:

G 0001/24, G 0001/99

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1208/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 9 March 2026

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 July 2024 concerning maintenance of the
European Patent No. 3188986 in amended form.**

Composition of the Board:

Chairman G. Patton
Members: S. Watson
Y. Podbielski

Summary of Facts and Submissions

I. An appeal was filed by the opponent against the decision of the opposition division maintaining European patent No. 3 188 986 in amended form according to the main request.

II. With communication of 27 March 2025, the opposition division corrected its written decision under Rule 140 EPC to correspond to the decision taken at the oral proceedings before the opposition division on 17 April 2024.

The present decision is based on the opposition division's corrected decision of 27 March 2025.

III. During the opposition proceedings, the opposition division had granted the request of the patent proprietor to bring the English language translation of the application documents into conformity with the application documents as originally filed, which were in the Italian language (Article 14(2) EPC).

The patent proprietor had requested that the phrase "*in particular, the separating element 20 is formed by a single separating wall 21*" on page 5, lines 7 to 8 of the application as published, be replaced by the phrase "*in particular, the separating element 20 consists of a single separating wall 21*" to conform with the Italian phrase "*in particolare, l'elemento 20 di separazione è costituito da una singola parete 21 divisoria*" on page 5, lines 22 to 23 of the description as originally filed.

The present decision by the board is based on this corrected translation.

IV. The requests of the parties are as follows.

The opponent ("appellant") requests that

- the decision under appeal be set aside, and
- the patent be revoked.

The patent proprietor ("respondent") requests that

- the appeal be dismissed, or if the decision under appeal is set aside
- the patent be maintained in amended form based on one of the sets of claims of the first to twelfth auxiliary requests filed with the reply to the appeal, whereby the second to twelfth auxiliary requests were first filed on 16 February 2024, or
- the case be remitted to the opposition division should the board consider it useful or have special reasons.

V. The following document which formed part of the decision under appeal is referred to in this decision:

D1: DE 23 27 294 A1.

VI. In preparation for oral proceedings, scheduled at the request of the parties, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 22 January 2026. The preliminary opinion of the board was that the appeal could be allowed and the patent should be revoked.

Neither party made any substantive submissions in response to the board's preliminary opinion. However, the patent proprietor, in a letter dated

9 February 2026, informed the board that neither the patent proprietor nor its representative would take part in the oral proceedings scheduled for 3 June 2026.

VII. This decision was taken in writing without holding oral proceedings, which were therefore cancelled.

VIII. Independent **claim 1** of the **main request** reads as follows (amendments shown with respect to claim 1 of the patent as granted, feature labelling as used by the appellant in its statement of grounds of appeal):

- 1.1** "Packet (1) of smoke articles, comprising:
 - a container (2), which has a parallelepiped shape and has a front wall (9), a rear wall (10), a bottom wall (8) and two lateral walls (11);
- 1.2** a parallelepiped-shape inner wrapper (3) that wraps a group of smoke articles, which is housed inside the container (2) and has a front wall (17), a rear wall (18), a top wall (15), a bottom wall (16) and two lateral walls (19); and
- 1.3** a separating element (20), which is arranged inside the inner wrapper (3) and divides the inner volume of the inner wrapper (3) so as to form several partitions of the group of smoke articles;
- 1.4** wherein the separating element (20) comprises a separating wall (21) that separates the inner volume of the inner wrapper (3) into two chambers (22) each containing a respective partition of the group of smoke articles;
- 1.5** wherein the separating wall (21) comprises a longitudinal edge resting on and fixed to the front wall (17), or to the rear wall (18), of the inner wrapper (3), the packet (1) of smoke articles is characterised in that

1.6 the separating element (20) ~~is formed by~~ consists of a single separating wall (21) which constitutes the border between the two chambers (22)."

Claim 7 of the **main request** is identical to claim 7 of the patent as granted and reads as follows:

"Packet (1) of smoke articles according to any one of claims 1 to 6, wherein the separating element (20) comprises one or more projecting elements (24) arranged for interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped."

IX. Independent **claim 1** of the **first auxiliary request** is identical to claim 1 of the main request.

Claim 7 of the **first auxiliary request** reads as follows (amendments made with respect to claim 7 of the main request):

"Packet (1) of smoke articles according to any one of claims 1 to 6, wherein the separating ~~element~~ wall (~~20~~21) comprises one or more projecting elements (24) arranged for interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped."

X. Independent **claim 1** of the **second auxiliary request** is identical to claim 1 of the main request.

Claim 7 of the **second auxiliary request** reads as follows (amendments made with respect to claim 7 of the main request):

"Packet (1) of smoke articles according to any one of claims 1 to 6, wherein the separating element (20) comprises one or more projecting elements (24) arranged for interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped, said one or more projecting elements (24) being made by notching, punching or drawing said separating element (20)."

XI. Independent **claim 1** of the **third auxiliary request** is identical to claim 1 of the main request.

Claim 7 of the **third auxiliary request** reads as follows (amendments made with respect to claim 7 of the main request):

"Packet (1) of smoke articles according to any one of claims 1 to 6, wherein from the separating element wall (20~~21~~) ~~comprises~~ one or more projecting elements (24) are obtained, said projecting elements (24) being arranged for interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped, said one or more projecting elements (24) being made by notching, punching or drawing said separating wall (21)."

XII. Independent **claim 1** of the **fourth auxiliary request** differs from claim 1 of the main request as it contains

the following amendment in feature 1.6 (shown with respect to feature 1.6 of claim 1 as granted):

"the separating element (20) ~~is formed by~~ consists of a single said separating wall (21) which is a single wall and constitutes the border between the two chambers (22)."

Claim 7 of the **fourth auxiliary request** reads as follows (amendments shown with respect to claim 7 as granted):

"Packet (1) of smoke articles according to any one of claims 1 to 6, wherein from the separating element (20) comprises one or more projecting elements (24) are obtained, said one or more projecting elements (24) being arranged for interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped, said one or more projecting elements (24) being made by notching, punching or drawing said separating element (20)."

XIII. Independent **claim 1** of the **fifth auxiliary request** is identical to claim 1 of the fourth auxiliary request.

Claim 7 of the **fifth auxiliary request** is identical to claim 7 of the third auxiliary request.

XIV. Independent **claim 1** of the **sixth auxiliary request** has the following amendments to features 1.5 and 1.6 (amendments shown with respect to claim 1 as granted):

"wherein the separating wall (21) comprises a longitudinal edge resting on and fixed to the front wall (17), or to the rear wall (18), of the inner wrapper (3), ~~the packet (1) of smoke~~

~~articles is characterised in that~~
the separating element (20) ~~is being~~ formed by a
single separating wall (21) which constitutes the
border between the two chambers (22) the packet
(1) of smoke articles is characterised in that
the separating element (20) comprises one or more
projecting elements (24) arranged for interacting
with one or more smoke articles and projecting
inside the inner wrapper (3) so as to vary the
available inner volume of the inner wrapper (3)
according to the cross section of the smoke
articles to be wrapped."

Claim 7 has been deleted in the **sixth auxiliary request**.

XV. Independent **claim 1** of the **seventh auxiliary request** corresponds to claim 1 of the sixth auxiliary request with the following further feature at the end of feature 1.6:

"said one or more projecting elements (24) being made by notching, punching or drawing said separating element (20)".

Claim 7 has been deleted in the **seventh auxiliary request**.

XVI. Independent **claim 1** of the **eighth auxiliary request** corresponds to claim 1 of the main request but with the following amended feature 1.6:

"the separating element (20) ~~is formed by~~ consists of a single separating wall (21) which constitutes the border between the two chambers (22), wherein from the separating wall (21) one or more projecting elements (24) are obtained, said one or more projecting elements (24) being arranged for

interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped."

Claim 7 has been deleted in the **eighth auxiliary request**.

XVII. Independent **claim 1** of the **ninth auxiliary request** corresponds to claim 1 of the eighth auxiliary request with the following further feature at the end of feature 1.6:

"said one or more projecting elements (24) being made by notching, punching or drawing said separating wall (21)".

Claim 7 has been deleted in the **ninth auxiliary request**.

XVIII. Independent **claim 1** of the **tenth auxiliary request** corresponds to claim 1 of the main request with the following amendments to features 1.5 and 1.6 (amendments shown with respect to claim 1 as granted):

"wherein the separating wall (21) comprises a longitudinal edge resting on and fixed to the front wall (17), or to the rear wall (18), of the inner wrapper (3), ~~the packet (1) of smoke articles is characterised in that~~ the separating element (20) ~~is~~ being formed by a single separating wall (21) which constitutes the border between the two chambers (22) the packet (1) of smoke articles is characterised in that the separating element (20) is made as a single body and said longitudinal edge is fixed by an adhesive strip or by gluing."

Claim 6 of the **tenth auxiliary request** reads as follows (amendments shown with respect to claim 7 of the main request, which is identical to claim 7 of the patent as granted):

"Packet (1) of smoke articles according to any one of claims 1 to ~~6~~5, wherein the separating element (20) comprises one or more projecting elements (24) arranged for interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped."

XIX. Independent **claim 1** of the **eleventh auxiliary request** differs from claim 1 of the main request through the following additional feature at the end of feature 1.6:

"wherein the separating element (20) is made as a single body and said longitudinal edge is fixed by an adhesive strip or by gluing."

Claim 6 of the **eleventh auxiliary request** reads as follows (amendments shown with respect to claim 7 of the main request, which is identical to claim 7 as granted):

"Packet (1) of smoke articles according to any one of claims 1 to ~~6~~5, wherein from the separating ~~element wall~~ (20~~21~~) ~~comprises~~ one or more projecting elements (24) are obtained, said one or more projecting elements being arranged for interacting with one or more smoke articles and projecting inside the inner wrapper (3) so as to vary the available inner volume of the inner wrapper (3) according to the cross section of the smoke articles to be wrapped."

XX. Independent **claim 1** of the **twelfth auxiliary request** is identical to claim 1 of the eleventh auxiliary request.

Claim 6 of the **twelfth auxiliary request** differs from claim 6 of the eleventh auxiliary request as it has the following additional feature at the end of the claim:

"said one or more projecting elements (24) being made by notching, punching or drawing said separating wall (21)"

XXI. The arguments of the parties relevant for the decision are dealt with in detail below in the reasons for the decision.

Reasons for the Decision

1. *Decision taken without holding oral proceedings*

1.1 With its letter of 9 February 2026 the respondent stated that neither the respondent nor its representatives would attend the oral proceedings before the board.

In line with established case law the board understands an expressed intention not to attend oral proceedings as an implicit withdrawal of a request for oral proceedings (see Case Law of the Boards of Appeal, 11th edition 2025 ("CLB"), III.C.5.3.2 a)).

The board is not obliged to hold the oral proceedings in the absence of the party (see CLB, III.C.5.3.2 d)). This is all the more true in the present case since all the respondent's requests were dealt with in the board's communication under Article 15(1) RPBA without any reaction in substance filed by the parties thereafter.

1.2 As the appellant only requested oral proceedings for the case that its request to set aside the decision and revoke the patent was not allowed, no active request for oral proceedings remains and the decision may be taken in writing without violating the parties' right to be heard under Article 113(1) EPC (see CLB, III.C. 5.3.2 c)).

2. *Main request - Article 84 EPC - claim 7*

2.1 As a consequence of bringing the translation of the application into conformity with the originally filed documents (see point III above), feature 1.6 of claim 1 of the main request was amended with respect to claim 1 as granted as follows:

"the separating element (20) ~~is formed by~~ consists of a single separating wall (21) which constitutes the border between the two chambers".

2.2 The appellant argued that the amendment in claim 1 of the main request led to a lack of clarity in dependent claim 7.

2.3 The opposition division found that there was no lack of clarity (see decision under appeal, point II.26).

2.4 The appellant contested the opposition division's findings and argued that if claim 1 was understood to mean that the separating element consisted of one sole component (i.e. the separating wall only), it was not clear for the skilled person how the separating element of claim 7 could then also comprise projecting elements.

2.5 The board comes to the conclusion that there is a lack of clarity in claim 7 of the main request (Article 84 EPC) for the following reasons.

2.5.1 According to claim 1 of the main request the separating element cannot comprise anything other than a single separating wall, but in claim 7 "the separating element (20) comprises one or more projecting elements (24)". The separating element therefore cannot consist of solely a single separating wall as it must also comprise projecting elements, and it may also comprise further elements. Therefore from the wording alone, there appears to be a lack of clarity. The skilled person cannot determine to what extent the claim includes separating elements with further elements, such as, for example, folded tabs.

2.5.2 The respondent argued that there was no contradiction as "the aim is to protect a single separating wall (which is the unique element of the separating element) from which projecting elements can be made to further separate the smoking articles inside the chambers".

The respondent further argued (albeit with respect to Article 123(3) EPC) that the projecting elements were claimed together with their specific function of further subdividing the inner volume and were not general projecting elements. The projecting elements therefore were not distinct from the separating wall but formed part of the wall itself. This meant that the feature that the separating element consisted of a single separating wall had to be interpreted in such a way that it excluded any other folded flaps at the sides where the single separating wall rested and was fixed to the front wall or rear wall of the inner wrapper.

However, in the board's view, these arguments imply that the separating element (20) effectively can consist of more than a single separating wall (21). In addition to a single separating wall (21) which constitutes the border between the two chambers, there are also further separating walls (24) projecting within the chambers which further separate the smoke articles.

It is not clear to the skilled person why a projecting element is to be understood as part of a separating element consisting of a single separating wall, whereas any other "folded flap" is excluded.

- 2.5.3 The opposition division reasoned that in claim 7 the term "separating element" must be read as "separating wall" (see decision under appeal, point 26.2).

However, if claim 7 is interpreted in this way, it is still not clear to what extent this feature limits the claim. The claim does not exclude the presence of fixing walls as part of the separating wall. In addition, fixing walls could also be considered to be projecting elements according to claim 7.

It is therefore not clear how the skilled person can determine whether any additional elements on, or forming part of, a separating wall fall within the scope of claim 1 or not, i.e. which elements are deemed to be part of the single separating wall and which are deemed to be additional to the wall.

For example, the opposition division held, when considering novelty, that the presence of "an additional attachment panel at one or both sides of the

portion which constitutes the 'separating wall'" in D1 rendered claim 1 novel over this document, as it meant that the separating element was not "formed by a single separating wall" (see decision under appeal, point II.27.2). At the same time the opposition division considered that the projecting elements in claim 7 formed part of the separating wall so that the separating element still consisted of only a single separating wall (see decision under appeal, point II.26.2). The board cannot see how the opposition division was able to determine which additional panels fall within the scope of the claim and which are excluded by it.

2.6 The main request is therefore not allowable as it does not fulfil the requirements of Article 84 EPC. The features of claim 7, when read with amended claim 1, leave the skilled person unable to determine which packets of smoking articles fall within the scope of the claims as it is not clear to what extent any further elements form part of the separating element and/or the separating wall.

3. *Main request - Article 54 EPC - claim 1 - D1*

3.1 Further, the board is of the view that claim 1 must be interpreted such that the feature "*the separating element consists of a single separating wall (21) which constitutes the border between the two chambers (22)*" is given a broader scope than that used by the opposition division.

The opposition division reasons that this feature must be understood as excluding any attachment panels at one or both sides of the portion which constitutes the "separating wall" (see decision under appeal, point

II.27.2). The board however agrees with the appellant's interpretation that the attachment panels in D1 could also be regarded as similar to projecting elements (according to claim 7). Claim 7 does not exclude that the projecting elements are attached to a wall of the inner wrapper on one side.

3.2 The respondent argued that feature 1.6 required that (i) the separating element consisted of only one element which is the separating wall, (ii) the separating wall was a single wall which (iii) constituted the border between the two chambers. According to the respondent, the separating element could have no elements which had a function other than separating.

3.2.1 The board notes that this interpretation of feature 1.6 is in contradiction to claim 7 of the main request, in which the separating element is not a single wall constituting the border between the chambers but also comprises further elements (projecting elements 24).

3.2.2 The board is further of the view that there is no feature in claim 1 which excludes the presence of attachment panels in general.

Although the description and drawings are always consulted when interpreting the claims (G 1/24, Reasons 12.2), it is established case law that limitations found only in embodiments cannot be used to limit the claims (see CLB, II.A.6.3.4 and G 1/24, Reasons 11 and 12.1).

In the present case, figures 3 to 6 of the contested patent appear to show a separating wall with no attachment tabs. This is however not reflected in claim

1 which only refers to a separating element which consists of a single separating wall. In addition, as claim 7 specifies that the separating element also comprises further elements, the skilled person understands that the separating element of claim 1 is not restricted to the simple planar quadrilateral shape shown in figures 3 to 6 of the contested patent.

In document D1 the separating element consists of a single separating wall which constitutes the border between the two chambers (see figure 3). Therefore document D1 discloses feature 1.6.

3.3 The respondent has not indicated any other distinguishing features of claim 1 with respect to D1, therefore the board concludes that the subject-matter of claim 1 of the main request is not novel (Article 54 EPC).

4. *Remittal (Article 11 RPBA)*

4.1 As the board concludes that the main request does not fulfil the requirements of at least Articles 54 and 84 EPC, the decision under appeal must be set aside.

4.2 The respondent has made a general request for remittal of the case to the opposition division for further prosecution, should special reasons be found to exist. The appellant has not made any requests or submissions on this point.

The board is of the view that although the auxiliary requests were not decided on by the opposition division in the decision under appeal, the board and the parties can reasonably be expected to consider the auxiliary requests within the appeal proceedings for the sake of

procedural economy. Both parties presented extensive written comments regarding the auxiliary requests and neither party responded to the board's preliminary opinion on the auxiliary requests.

- 4.3 Special reasons for remittal, such as an undue burden, are therefore not apparent to the board (Article 11 RPBA, in particular OJ EPO, Supplementary publication 2, Rules of procedure of the Boards of Appeal 2020, page 53).

The board therefore also decided on the first to twelfth auxiliary requests.

5. *First auxiliary request - Article 84 EPC - claim 7*

- 5.1 Claim 7 of the first auxiliary request was amended as follows:

"wherein the separating element wall ~~(20)~~ (21) comprises one or more projecting elements (24)...".

- 5.2 As discussed above in relation to the main request (see point 2.5.3 of this decision), if the separating wall is able to itself comprise further elements, it is not clear in what way these further elements are limited, and whether these further elements may include tabs attached to the front or rear wall.

Claim 7 therefore still lacks clarity (Article 84 EPC).

6. *First auxiliary request - Article 54 EPC - claim 1*

As claim 1 of the first auxiliary request is identical to claim 1 of the main request, the objection of lack of novelty with respect to D1 has not been overcome.

7. *Second auxiliary request - Article 84 EPC - claim 7*

7.1 In claim 7 of the second auxiliary request, the following has been added:

"said one or more projecting elements (24) being made by notching, punching or drawing said separating element (20)".

7.2 This does not overcome the lack of clarity of claim 7 of the main request as it still implies that the separating element comprises more elements than only a single separating wall (see point 2. above).

8. *Second auxiliary request - Article 54 EPC - claim 1*

As claim 1 of the second auxiliary request is identical to claim 1 of the main request, the objection of lack of novelty with respect to D1 has not been overcome.

9. *Third auxiliary request - Article 84 EPC - claim 7*

9.1 The amendments made to claim 7 of the third auxiliary request do not overcome the lack of clarity of claim 7 of the main request as it is still not clear for the skilled person whether attachment tabs can form part of the separating element or not, an attachment tab may also be obtained from the separating wall (see point XI. above).

10. *Third auxiliary request - Article 54 EPC - claim 1*

As claim 1 of the third auxiliary request is identical to claim 1 of the main request, the objection of lack of novelty with respect to D1 has not been overcome.

11. *Fourth auxiliary request - Article 84 EPC - claim 7*

The amendments made to claim 7 do not overcome the lack of clarity of claim 7 of the main request. There is still a contradiction between claims 1 and 7 because claim 7 has a separating element with one or more projecting elements in addition to the single separating wall, even when taking into consideration the amendments introduced in claim 1 of the fourth auxiliary request (see point XII. above).

12. *Fourth auxiliary request - Article 54 EPC - claim 1*

12.1 Feature 1.6 of claim 1 has been amended as follows (with respect to claim 1 of the main request):

"the separating element (20) consists of ~~a single~~ said separating wall (21) which is a single wall and constitutes the border between the two chambers".

12.2 The board cannot see how this amendment could render the claim novel with respect to D1. As the respondent itself stated, claim 1 substantially corresponds to claim 1 of the main request (see reply to the appeal, page 25).

13. *Fifth auxiliary request - Article 84 EPC (claim 7) and Article 54 EPC (claim 1)*

Claim 7 of the fifth auxiliary request corresponds to claim 7 of the third auxiliary request and claim 1 corresponds to claim 1 of the fourth auxiliary request. Therefore, for the same reasons as given above for claims 1 and 7 of these requests, the fifth auxiliary request does not fulfil the requirements of Articles 54 and 84 EPC.

14. *Sixth auxiliary request*

14.1 In the sixth auxiliary request, feature 1.6 has been amended to refer to the separating element "being formed by a single separating wall" rather than having a separating element which "consists of a single separating wall". The features of claim 7 of the main request have been included in claim 1.

14.2 The appellant argued that the respondent is not allowed to revert to the version in feature 1.6 of claim 1 which uses "being formed by" by rather than "consists of" as it has only the status of respondent in the present appeal proceedings. Although the appellant referred to Article 123(3) EPC in its submissions, the board understands this objection as meaning that the appellant views the sixth auxiliary request as worsening its legal position, contrary to the prohibition of *reformatio in peius*, because the phrase "being formed by" is considered to be broader than "consists of".

14.3 The board notes that the respondent did not indicate in its reply to the appeal that feature 1.6 had been changed nor did it give any reasons why the corrected translation had no longer been used.

In the absence of any justification for the amendment, including the basis in the originally filed application documents for this amendment, and to prohibit the sole appellant's legal position being worsened, the board concludes that the sixth auxiliary request must be rejected (G 1/99, Order, first sentence).

15. *Seventh auxiliary request*

As noted by the appellant, the same issue regarding the scope of protection of the claims of the sixth auxiliary request also applies to the seventh auxiliary request, which must therefore also be rejected.

16. *Eighth auxiliary request - Article 84 EPC - claim 1*

16.1 Claim 1 of the eighth auxiliary request corresponds to claim 7 of the third auxiliary request (when read together with claim 1 of the third auxiliary request), but without the additional feature relating to how the projecting elements are made.

16.2 The objections regarding the lack of clarity of claim 7 of the third auxiliary request also apply to claim 1 of the eighth auxiliary request.

17. *Ninth auxiliary request - Article 84 EPC - claim 1*

17.1 Claim 1 of the ninth auxiliary request corresponds to claim 7 of the third auxiliary request (when read together with claim 1 of the third auxiliary request).

17.2 The objections regarding the lack of clarity of claim 7 of the third auxiliary request therefore also apply to claim 1 of the ninth auxiliary request.

18. *Tenth auxiliary request*

18.1 In the tenth auxiliary request, feature 1.6 has been amended as in claim 1 of the sixth and seventh auxiliary requests (see point 14.1 of this decision).

18.2 As noted by the appellant, the same issue regarding the scope of protection of the claims of the sixth auxiliary request also applies to the tenth auxiliary request. As the respondent did not comment on this amendment, the board again concludes that the request should be rejected.

19. *Eleventh auxiliary request - Article 84 EPC - claim 6*

19.1 Claim 6 of the eleventh auxiliary request corresponds to claim 7 of the third auxiliary request without the features relating to how the one or more projecting elements are made.

19.2 For the same reasons as given above for claim 7 of the third auxiliary request (see point 9.1), the board concludes that claim 6 of the eleventh auxiliary request is unclear.

20. *Twelfth auxiliary request - Article 84 EPC - claim 6*

20.1 Claim 6 of the twelfth auxiliary request corresponds to claim 7 of the third auxiliary request.

The objection of lack of clarity for claim 7 of the third auxiliary request therefore also applies to claim 6 of the twelfth auxiliary request.

21. *Conclusion*

21.1 The board therefore comes to the conclusion, that the appellant has convincingly demonstrated that the decision under appeal should be set aside because the subject-matter of claim 1 of the main request is not novel (Article 54 EPC) and claim 7 of the main request is not clear (Article 84 EPC).

- 21.2 The board also concludes that no special reasons are present for remittal to the opposition division for further prosecution of the case (Article 11 RPBA).
- 21.3 Further, none of the auxiliary requests are allowable because the subject-matter of claim 1 of the first to fifth auxiliary requests is not novel (Article 54 EPC); claim 7 of the first to fifth auxiliary requests as well as claim 1 of the eighth and ninth auxiliary requests, and claim 6 of the eleventh and twelfth auxiliary requests are not clear (Article 84 EPC); and the sixth, seventh and tenth auxiliary requests must be rejected as they would put the appellant in a worse situation than if it had not appealed.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated