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**Datasheet for the decision
of 18 May 2026**

Case Number: T 1447/24 - 3.2.01

Application Number: 19707122.8

Publication Number: 3820326

IPC: A45D40/16, A45D40/00

Language of the proceedings: EN

Title of invention:

PROCESS FOR PRODUCING LIPSTICKS WITH SPECIAL TRIDIMENSIONAL
SURFACE EFFECTS

Patent Proprietor:

Intercos S.p.A.

Opponent:

Weckerle GmbH

Headword:

Relevant legal provisions:

EPC Art. 56, 83, 84, 112(1)(a), 123(2)
RPBA 2020 Art. 11, 15(1)

Keyword:

Admittance - main request (yes)
Allowability of amendments - main request (yes)
Clarity - main request (yes)
Sufficiency of disclosure - main request (yes)
Inventive step - main request (yes)
Remittal - (no)
Referral to the Enlarged Board of Appeal - (no)

Decisions cited:

G 0009/91

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1447/24 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 18 May 2026

Appellant: Weckerle GmbH
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 7 November 2024
concerning maintenance of the European Patent
No. 3820326 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: B. Spitzer
A. Jimenez

Summary of Facts and Submissions

- I. The opponent filed an appeal against the interlocutory decision of the opposition division finding that the European patent No. 3 820 326 (the patent) as amended according to the main request meets the requirements of the EPC.
- II. On 23 December 2025, the Board issued a communication pursuant to Article 15(1) RPBA.
- III. Oral proceedings took place via videoconference before the Board on 18 May 2026.
- IV. The final requests were as follows.

The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked. They also requested that the case be remitted to the opposition division for further prosecution and that the following question be referred to the Enlarged board of appeal.

"If the proprietor and the Opposition Division consider the same technical problem to arise from a differentiating feature, and the proprietor argues solely on that objective technical problem in the appeal proceedings (in writing as well orally) can the Board of Appeal propose an own objective technical problem, which also deviates from the appellant?"

The respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary measure, that the decision under appeal be set aside and the patent be maintained according to the auxiliary request filed

with their statement of grounds of appeal.

V. The documents cited in this decision include the following:

D1/D1a: JP 2001072541 A and its English machine translation

D5: KR 100698920 B1 and its English machine translation

D6: KR 10-0317449 and its English machine translation

D8: EP 1 437 062 A1

VI. Independent claim 1 of the main request has the following wording:

"1. Process for production of lipsticks with special tridimensional superficial effects, comprising the following succession of steps:

a) forming a metallic tap (1) with a head part (2) shaped as a lipstick with a rough external lateral surface;

b) polishing of the external lateral surface of the head part (2) of said metallic tap (1) to obtain a head part with a polished external lateral surface (5);

c) laser working of the polished external lateral surface (5) of said head part (2) to obtain a tap with laser-worked head part (6) worked according a desired tridimensional design;

d) introducing said tap with laser-worked head (6) into an internal cavity of a molding machine to form a molding space (8) between said tap and said cavity (7);

e) forming by molding, inside said molding space (8), a hollow ogive (9) of malleable plastic material with an internal cavity (10) shaped in complementary way with respect to said tridimensional design;

wherein:

- polishing of the external lateral surface (5) of the head part (2) of the metallic tap (1) is a mirror-like polishing;
- the tridimensional design of the laser-worked head part (6) of the metallic tap (1) and of the lateral surface of the solidified lipstick (13) is a velvet-like design;
- after step e) the following further steps are carried out:
 - f) introduction of the ogive (9) with the shaped internal cavity (10) looking upwards into a molding space (11) of a molding machine;
 - g) pouring of hot fluid material (12) adapted for a lipstick into said shaped cavity (10) of the ogive (9);
 - h) cooling of the poured material (12) until obtaining a solidified lipstick (13);
 - i) drawing of the solidified lipstick (13) from the internal cavity (10) of the ogive (9);
 - j) final covering of the solidified lipstick (13) with small pearls (15) by means of a cyclone system (14) to obtain a pearled lipstick (13)."

Reasons for the Decision

Main Request

1. Admittance of the main request
 - 1.1 The appellant argued that the opposition division should not have admitted this request because it did not fulfil the criterion of clear allowability (see Guidelines for Examination in the European Patent Office, April 2025, sections E-VI, 2.1, 2.2, H-II, 2.7.1 and 3.5).

- 1.2 The main request underlying the decision under appeal was filed as a new main request during the oral proceedings before the opposition division on 17 September 2024 in response to the preliminary opinion of the opposition division, replacing the main request previously filed during the written proceedings on 17 July 2024. The new main request corresponds to the previous main request, with the deletion of the term "U-shaped" in feature f) ("*f) introduction of the ogive (9) with the shaped internal cavity (10) looking upwards into a ~~U-shaped~~ molding space (11) of a molding machine*").
- 1.3 The opposition division admitted the main request filed during the oral proceedings because, after having heard the parties on this issue, it found that the request directly addressed the opponent's objection of 2 September 2024, was not of "complicated nature", and met the criterion of "clear allowability" (see decision under appeal, Reasons, point 2).
- 1.4 The Board notes that the main request cannot be disregarded in the appeal proceedings.
 - 1.4.1 The appellant did not contest that the opposition division applied wrong criteria or exercised its discretion arbitrarily, but rather that the criterion of clear allowability was not met.
 - 1.4.2 In the context of the review of discretionary decisions taken by the departments of first instance, reference is made to established case law (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition, July 2025, "Case Law", V.A.3.4.1b)) according to which the Board should overrule the way in which the department of first instance exercised its discretion

in reaching a decision in a particular case only if the Board concludes that the first instance did so in accordance with the wrong principles, without taking the right principles into account or in an arbitrary or unreasonable way, thereby exceeding the proper limits of its discretion.

- 1.4.3 In the present case, the decision was based on the correct criteria (clear allowability) and there is no reason to conclude that the division exercised its discretion in an unreasonable way.

2. Allowability of the amendments (Article 123(2) EPC)
 - 2.1 The opposition division came to the conclusion that the requirements of Article 123(2) EPC were met (see decision under appeal, Reasons, point 4.1). The Board share's the opposition division's view.

 - 2.2 The appellant argued that the feature "a molding space of a molding machine" in feature f) of claim 1 of the main request extended beyond the content of the originally filed application, and that neither page 4, lines 6 to 9 of the originally filed application nor any other passage provided a basis for this amendment. According to the appellant, that passage merely served as a basis for a molding machine with a molding space as disclosed in document D8, which was expressly referenced therein. Since claim 1 was not limited to that specific molding space, feature f) did not meet the requirements of Article 123(2) EPC.

 - 2.3 Page 4, lines 6 to 9 of the originally filed application reads as follows.

"Once extracted from the molding machine, the hollow ogive 9 is inserted into a molding space 11 of a molding machine of any known type (e.g. such as that described in EP 1 437 062 A1), shown in figure 11, which receives by pouring a fluid product 12 adapted to form a lipstick."

- 2.4 Like the opposition division and the respondent, the Board finds that that passage is not limited to the molding space of the molding machine disclosed in document D8, which is merely mentioned as an example, but encompasses the molding space of a molding machine of any known type.
- 2.5 The requirements of Article 123(2) EPC are thus met.
- 3. Clarity (Article 84 EPC)
 - 3.1 The opposition division came to the conclusion that claim 1 was clear (see decision under appeal, Reasons, point 4.2).
 - 3.2 The appellant argued that the configuration/shape of the molding space was essential for the solution of the alleged technical problem, i.e. the transfer of the tridimensional laser-worked head part from the ogive onto the lipstick. The missing essential features for defining the molding space rendered the claim unclear.
 - 3.3 The Board shares the opposition division's view.
 - 3.3.1 Method step f is clear *per se*. The content of this feature is clear without defining details of the shape of the molding space.

- 3.3.2 The shape of the molding space is not disclosed as an essential technical feature for solving the disclosed technical problem to provide an improved process adapted to produce a lipstick with special tridimensional surface effects. Therefore, no essential features are missing, and no additional features specifying the shape of the molding space are required.
- 3.4 The requirements of Article 84 EPC are thus met.
- 4. Sufficiency of disclosure (Article 83 EPC)
 - 4.1 The opposition division came to the conclusion that the invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (see decision under appeal, Reasons, point 4.3).
 - 4.2 The appellant contested this conclusion with regards to features f), e) and j).
 - 4.2.1 According to the appellant, feature f) did not contribute to the improvement of the transfer of the tridimensional laser-worked head part from the ogive to the lipstick. The appellant argued that not only was the essential feature for improving said transfer missing in the claims, but the skilled person was not at all taught by the patent how the transfer could actually be improved, in particular not if an arbitrary configuration/shape of the molding space was assumed.
 - 4.2.2 Additionally, the combination of the features of the mirror-like polishing of the head part (first bullet point of feature e) and the laser working of the polished surface of the head part (second bullet point of feature e) was insufficiently disclosed for being

carried out by the skilled person because these features were contradictory. The surface was described as highly reflective due to mirror-like polishing, yet effective laser processing required sufficient absorption of laser energy.

- 4.2.3 Since, according to the opposition division, finishing by pearling was not known to be suitable for use with lipsticks having a velvet-like design, and since the patent did not disclose the technical means enabling such a combination of features, the patent was, for this reason as well, insufficiently disclosed (see decision under appeal, Reasons, point 5.1.4.2).

- 4.3 The Board concurs with the conclusion of the opposition division and the respondent's arguments (see decision under appeal, Reasons, point 4; see reply to the statement of grounds of appeal, points 2b).

- 4.3.1 Concerning sufficiency of disclosure, the Board remarks that it is established case law that a technical effect is to be taken into account in assessing enablement only if it is explicitly claimed. If it is not claimed, it is irrelevant for enablement whether or not it is actually achieved. The question whether it is achieved might then become relevant when assessing inventive step, namely for the purposes of formulating the objective technical problem (see Case Law, II.C.3.3.).

- 4.3.2 Since the alleged effect of preventing deformation of the ogive is not claimed, the allegedly missing features for achieving this effect does not prevent the person skilled in the art to carry out the invention, in particular feature f).

4.3.3 Concerning feature e) and the alleged incompatible laser working of a mirror-like polished metallic surface, in the Board's view, the person skilled in the art knows how to use a laser and would choose the proper type, its power, speed and frequency accordingly to obtain the desired velvet-like tridimensional design on a mirror-like polished metal surface.

4.3.4 Last but not least, feature j), namely the final covering of the solidified lipstick with small pearls by means of a cyclone system, is generally known in the art. This is acknowledged by the respondent, who further submitted in its reply to the statement of grounds of appeal that it was merely necessary for the pearl dispensers to eject pearls without accompanying improper material. Point 5.1.4.2 of the Reasons of the decision under appeal addresses inventive step issues and does not concern sufficiency of disclosure. As regards the distinction between Article 56 and Article 83 EPC, the Board refers to established case law according to which, although the same level of skill is applied for both provisions, the two starting points differ: for inventive step, the skilled person knows only the prior art, whereas for sufficiency of disclosure, they are aware of both the prior art and the disclosed invention (see Case Law, I.D.8.3.1).

4.4 The requirements of Article 83 EPC are thus met.

5. Inventive step (Article 56 EPC)

5.1 Closest prior art and distinguishing features

It is common ground that document D1/D1a presents a suitable starting point for the evaluation of inventive step. It is also undisputed that the subject-matter of

claim 1 differs from document D1/D1a in feature j):

"j) final covering of the solidified lipstick (13) with small pearls (15) by means of a cyclone system (14) to obtain a pearled lipstick (13)".

In the oral proceedings before the Board, the appellant no longer contested that feature f) was not disclosed in document D1/D1a:

"f) introduction of the ogive (9) with the shaped internal cavity (10) looking upwards into a molding space (11) of a molding machine" "

For the sake of completeness, the Board notes that in document D1/D1a the ogive is attached to a lipstick container (see document D1, Figure 6A, see decision under appeal, Reasons, point 5.1.4.1). Although the ogive in document D1/D1a may be positioned somewhere, the document does not disclose any details thereof, in particular, it does not disclose a molding space of a molding machine.

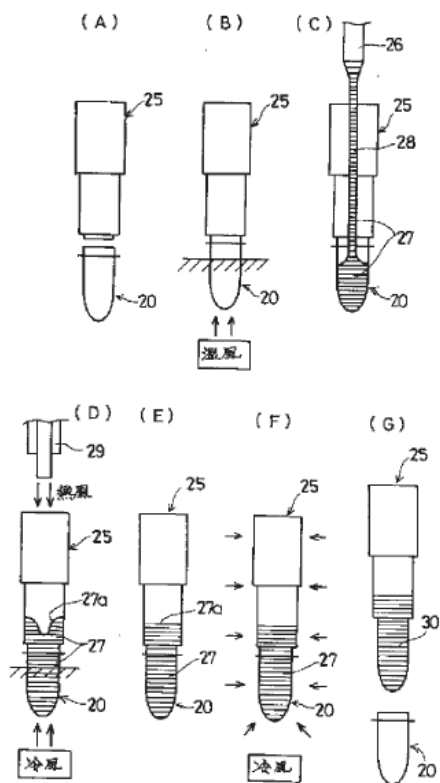


Figure 6 of document D1/D1a

5.2 No synergistic effect

The Board shares the opposition division's and the appellant's view that there is no synergistic effect between features f) and j) of claim 1; rather they represent an aggregation or juxtaposition of features. In addition, features f) and j) relate to different phases of the production process defined in claim 1. Therefore, as argued by the appellant, the partial problem approach is to be applied (see Case Law, I.D. 9.3.2; see decision under appeal, Reasons, point 5.1.4)).

5.3 Technical effect, partial objective technical problem of feature f) of claim 1

- 5.3.1 The opposition division based its conclusion on inventive step with regard to feature f) of claim 1 on the partial objective technical problem of how to avoid a deformation of the ogive (see decision under appeal, Reasons, points 5.1.4 and 5.1.4.1). The Board disagrees.
- 5.3.2 The Board concurs with the appellant's view that feature f) of claim 1 does not limit the configuration/shape of the molding space and therefore does not specify that the ogive is supported against deformation by any means. Furthermore, there is no such disclosure in the description or the Figures of the patent.
- 5.3.3 Thus, the disclosure in the patent does not support the respondent's narrow interpretation of feature f) of claim 1, according to which, "*[a] skilled person having read the description and seen Fig. 11 of the opposed patent is obliged to interpret 'the molding space of a molding machine' recited in feature f) of the Main Request as a wall-limited complementary space into which the ogive is introduced.*" (emphasis added by the Board; see reply to the statement of grounds of appeal, page 7, last paragraph)
- 5.3.4 Since, as argued by the appellant, there is no special technical effect of feature f), the partial objective technical problem solved by feature f) may be seen as merely providing an alternative, as already set out in point 6.4.5 of the Board's communication under Article 15(1) RPBA (see Case Law, I.D.4.5.).
- 5.3.5 The appellant argued that since feature f) did not provide any technical effect, this feature did not solve any objective technical problem and could not

render the claimed teaching inventive.

5.3.6 The Board points out that feature f) is a structural and technical feature and, as such, cannot be disregarded. It has a technical function, namely the support of the ogive: in the claimed process, the ogive is introduced with the shaped internal cavity looking upwards into a molding space of a molding machine, whereas in the process of document D1/D1a (see document D1/D1a, Figures 6 A to 6C), the ogive is attached to the lipstick container. Thus, feature f) provides an alternative manner of supporting the ogive.

5.4 Obviousness of the solution in view of document D8

5.4.1 The appellant pointed to Figure 11 of the patent and Figure 2 of document D8, which both showed essentially the same molding space. Thus, feature f) was disclosed in document D8. Moreover, the process disclosed in document D8, as well as that of the patent, was suitable for solving the partial objective technical problem formulated by the respondent.

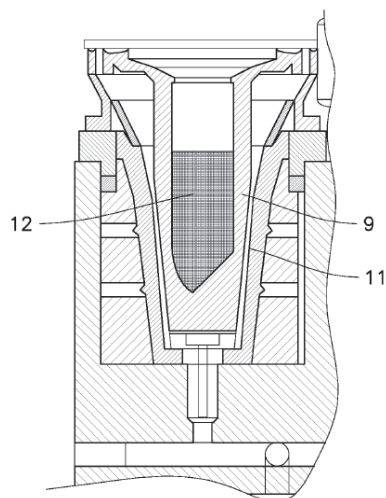


Fig.11

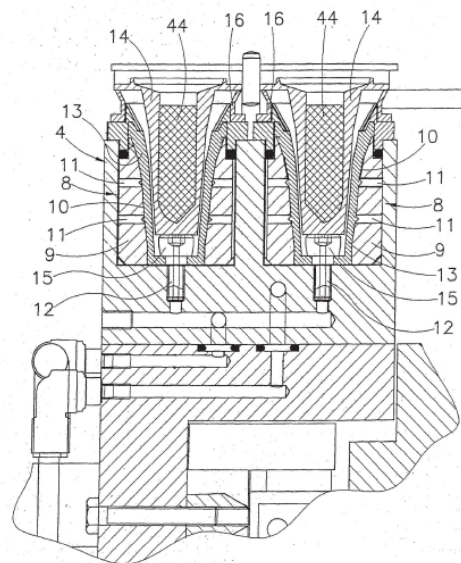


Figure 11 of the patent (left side) and Figure 2 of document D8 (right side)

5.4.2 The appellant further argued that the person skilled in the art starting from document D1/D1a would have considered document D8 and arrived in an obvious way at the claimed solution.

The fact that in document D1/D1a the ogive was filled through the lipstick container while in document D8 the ogive was filled before the lipstick container was assembled, would not have hindered the person skilled in the art to combine these teachings.

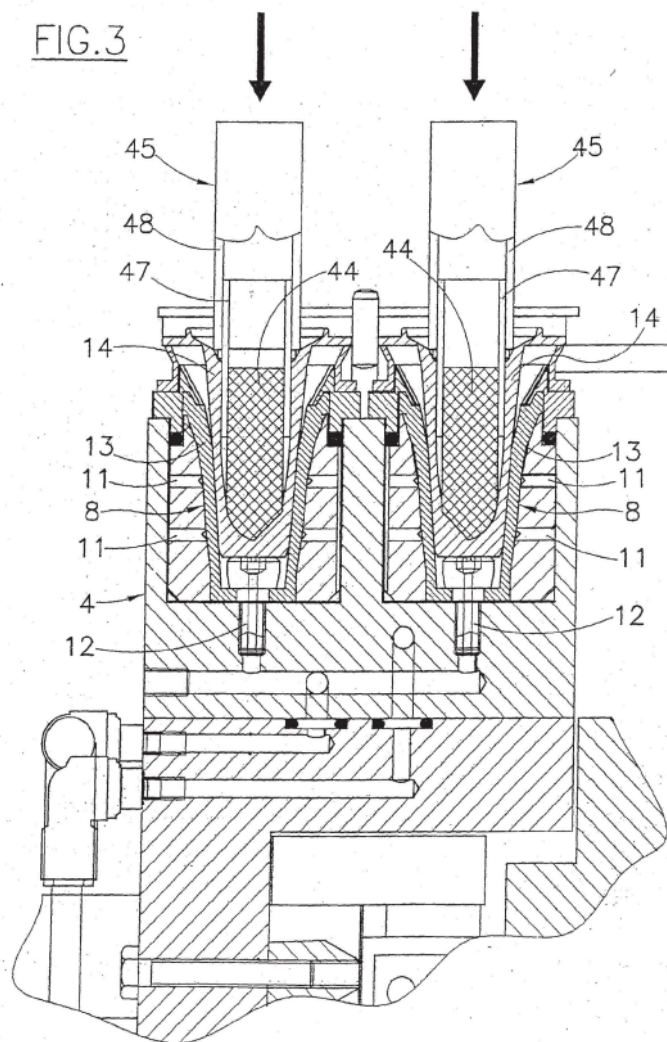


Figure 3 of document D8 (lipstick container 45, ogive 14, cosmetic product 44)

Figure 3 of document D8 showed the molding space together with the ogive and the mounted container, indicating that there was no incompatibility between the processes disclosed in documents D1/D1a and D8. Whether the lipstick container was mounted before or after filling was a mere design choice and depended on whether the lipstick container allowed filling from the back/bottom of the container.

Furthermore, a support for the ogive was also indispensable in document D1/D1a. The only difference was that document D1/D1a did not disclose such a support. However, the machine of document D1/D1a could easily be adapted to the molding space used in document D8.

5.4.3 The Board is not convinced by the appellant's arguments. While it is not contested that document D8 discloses feature f), the respondent contested that the person skilled in the art would have combined the teachings of documents D1/D1a and D8.

5.4.4 The Board concurs with the opposition division's finding and the respondent's arguments.

The processes disclosed in documents D1/D1a and D8 differ in several respects, in particular with regard to the positioning and support of the ogive, the filling of the ogive, the mounting of the lipstick container, and the sequence of the process steps.

In document D1/D1a, the lipstick container has the dual purpose of supporting the ogive and filling it with

fluid cosmetic material. By contrast, in document D8 the ogive is supported by the flanges of a mold, and the lipstick container is mounted only afterwards onto the already solidified lipstick mass in the ogive.

Accordingly, document D1/D1a operates without the need for a mold, as the ogive is supported from the top by the lipstick container during filling and solidification, and there is no need to subsequently assemble the container.

In view of these structural and operational differences, the person skilled in the art would not have combined the teachings of documents D1/D1a and D8.

5.4.5 Obviousness of the solution in view of document D5

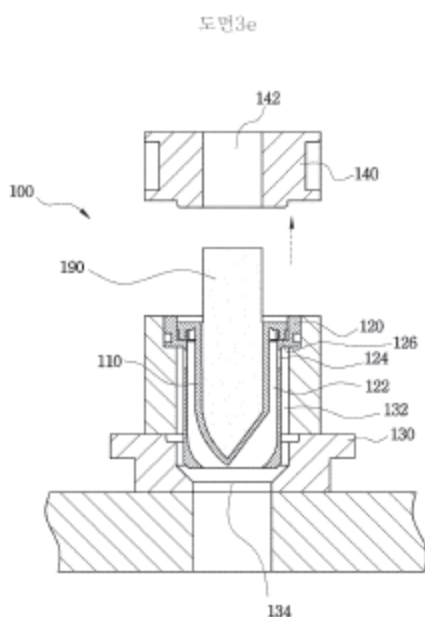


Figure 3e of document D5

Document D5 discloses feature f) (see document D5, Figure 3a). However, the differences between documents

5.6 Conclusion on inventive step of the subject-matter of claim 1

The subject-matter of claim 1 of the main request is not rendered obvious starting from document D1/D1a.

6. Conclusion for the main request

The decision of the opposition division that the main request is allowable is to be confirmed.

7. Remittal

7.1 The appellant (opponent) requested that the case be remitted to the opposition division to discuss inventive step of the subject-matter of the main request in case the objective technical problem starting from document D1/D1a were defined as an alternative.

7.2 In accordance with Article 11 RPBA, a Board shall not remit a case to the department whose decision as appealed for further prosecution, unless special reasons present themselves for doing so (see also Case Law, V.A.9.3.1).

7.3 The Board observes that there are no special reasons to remit the case to the department of first instance.

7.3.1 In fact, the appellant's request for remittal is based on the argument that the Board did not adopt either the respondent's formulation of the partial objective technical problem - which was also adopted by the opposition division - nor the appellant's view that no technical problem was solved by feature f). However, the fact that the issue of inventive step was discussed

before the Board on the basis of a different problem (of which the appellant was aware as it was already addressed in the Board's communication under Article 15(1) RPBA, point 6.4.5) as compared to the problem underlying the appealed decision, does not justify a remittal, because the scope of the remittal would be that of discussing inventive step before the opposition division on the same basis of the discussion that took place before the Board, following which the Board arrived at a conclusion (see minutes of the oral proceedings, page 2).

- 7.3.2 The appellant also argued that the formulation of the problem such as to find an alternative would justify searching for additional prior art in the framework of a remittal, because additional prior art would now be usable. However, although the appellant was informed of the Board's view as regards the partial problem solved by feature f), as stated above, no further document was submitted in advance of the oral proceedings. Furthermore, the appellant had sufficient opportunities for searching feature f) in the 9-month opposition period and in the subsequent opposition proceedings as well. The Board sees no reason deriving from a different formulation of the problem which would justify giving the appellant a further opportunity for searching for additional prior art disclosing feature f).

8. Request to refer a question to the Enlarged Board of Appeal (Article 112(1)(a) EPC)

- 8.1 With this request, the appellant essentially questions the power of the Board to formulate an objective technical problem which is different from the technical

problem formulated by the parties and by the opposition division.

- 8.2 However, the Board sees no necessity for a referral, as the reply to the appellant's question can already be inferred from the case law, in particular from G 9/91 (see point 18 of the reasons), according to which Article 114(1) EPC also applies in appeal proceedings, although in more restrictive manner than in opposition proceedings. The restrictions to Article 114(1) EPC in appeal such as stated in G 9/91 cannot however prevent a Board to deviate from the formulation of the technical problem as formulated by the parties and the opposition division, whilst remaining, as in the present case, within the same framework of facts and evidence submitted by the parties.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for referral to the Enlarged Board of appeal is refused.

The Registrar:

The Chairman:



M. Schalow

G. Pricolo

Decision electronically authenticated