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Datasheet for the decision of 7 July 2026

Case Number: T 0343/25 - 3.5.05

Application Number: 20199018.1

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Language of the proceedings: EN

Title of invention:
Hearing device including an optical sensor

Patent Proprietor:
Sonion Nederland B.V.

Opponent:
K/S HIMP

Headword:
Hearing device with biometric sensor/SONION

Relevant legal provisions:
EPC Art. 54, 56, 84, 100(a), 123(2)

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Keywords:

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Inventive step - main request (no)
Added subject-matter - 1st auxiliary request (yes): unallowable intermediate generalisation
Clarity - 2nd auxiliary request (no)

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Case Number: T 0343/25 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 7 July 2026

Appellant: (Patent Proprietor)	Sonion Nederland B.V. Taurusavenue 143 2132 LS Hoofddorp (NL)
Representative:	Sonion IP group Taurusavenue 143 2132 LS Hoofddorp (NL)
Appellant: (Opponent)	K/S HIMPP Nymoellevej 6 3540 Lynge (DK)
Representative:	FDST Patentanwälte Nordostpark 16 90411 Nürnberg (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 23 December 2024 concerning maintenance of the European Patent No. 3806495 in amended form.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	K. Peirs
	R. Romandini

Summary of Facts and Submissions

I. The appeals of the opponent and the proprietor lie from the interlocutory decision of the opposition division to maintain the opposed patent in amended form (Article 101(3)(a) EPC) in accordance with the proprietor's "auxiliary request 2" referred to in point 9 of the section "*Summary of Facts and Submissions*" of the appealed decision.

The opposition division found that the ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC prejudiced the maintenance of the patent as granted. Moreover, it found "auxiliary request 1" not to be allowable under Article 123(2) EPC.

II. The parties made the following final requests:

- The proprietor requested that the decision under appeal be set aside and, as a **main request**, that the opposition be rejected. In the alternative, it requested that the patent be maintained in amended form based on the set of claims according to either of two auxiliary requests, where

  - **auxiliary request 1** corresponds to "auxiliary request OA" mentioned in point 9 of the section "*Summary of Facts and Submissions*" of the appealed decision (see "Auxiliary request 1" mentioned there) and was re-filed with the proprietor's statement of grounds of appeal;

  - **auxiliary request 2** was filed with the written reply to the opponent's statement of grounds of appeal and corresponds to "auxiliary request 0B"

mentioned in point 9 of the section "*Summary of Facts and Submissions*" of the appealed decision (cf. "Auxiliary request 2" mentioned there). This is the claim request on the basis of which the opposition division decided to maintain the opposed patent in amended form.

- The opponent requested that the decision under appeal be set aside and that the patent be revoked.

At the end of the oral proceedings, the board's decision was announced.

III. Claim 1 of the **main request**, i.e. claim 1 as granted, reads as follows (board's feature labelling):

(a) "A hearing device (100) comprising:
(b) - a housing (104) comprising one or more wall portions defining an inner space and including a cavity (102a) extending through a wall portion of the housing (104);
(c) - a speaker (1606) provided in the inner space,
(d) - a circuit board layer,
(e) - an optical transducer (201) mounted in the cavity (102a),
(f) the optical transducer (201) being mounted on the circuit board layer (208) such that a spacing (207) exists between a side of the optical transducer (201) and a sidewall (216) of the cavity (102a);
(g) the circuit board layer (208) extending underneath the wall portion and touching the wall portion such that the optical transducer (201) is held within the cavity (102a) and
(h) - a protective substance (210) forming a shield over the optical transducer (201) and the

cavity (102a), the protective substance (210) configured to affect a field of view of the optical transducer (201)
characterized in that
(i) the protective substance (210) includes one or more sealing glues,
(j) the one or more sealing glues filling the cavity (102a) and
(k) forming the shield as an outwardly curved shield."

IV. Claim 1 of **auxiliary request 1** differs from claim 1 of the main request in that it further comprises, at the end, the following wording (board's feature labelling):

(l) ", and that the sidewall (216) of the cavity (102a) includes slanted side walls (216, 416) and a stepped design (202) comprising one or more step portions (202, 402), the stepped design enabling the protective substance (210, 410) to remain within the cavity during manufacturing, fostering the protective substance (210, 410) to form a dome around the cavity".

V. Claim 1 of **auxiliary request 2** differs from claim 1 of the main request in that it further comprises, at the end, the following wording (board's feature labelling and underlining, the latter highlighting an amendment vis-à-vis feature (l)):

(m) ", and that the sidewall (216) of the cavity (102a) includes slanted side walls (216) and a stepped design (202) comprising <u>two</u> or more step portions (202), the stepped design enabling the protective substance (210) to remain within the cavity during manufacturing, fostering the protective

substance (210) to form a dome around the cavity".

Reasons for the Decision

1. *Technical background*

1.1 The opposed patent addresses the technical challenges associated with integrating optical transducers, such as those for measuring a user's heart rate, into the compact housings of in-ear hearing devices like receiver-in-canal (RIC) hearing aids or earbuds. Key problems in that regard include the lack of internal space and the difficulty in effectively controlling the transducer's optical performance (i.e. its "field of view") once it is miniaturised and embedded in the hearing-device housing.

1.2 The present invention proposes a specific mounting assembly that is said to solve these problems. Instead of placing the optical transducer inside the main body of the hearing device, it is mounted in a cavity (102a) that extends through a wall of the hearing device's housing (104). A circuit board (208) seals the bottom of this cavity and the optical transducer (201) is mounted on that circuit board.

1.3 In that context, the crucial step is that the remaining space in the cavity is then filled with a protective substance (210), specifically a liquid-sealing glue like epoxy. This substance then cures to form a solid, outwardly-curved shield over the optical transducer. This single component simultaneously protects the optical transducer from the environment and acts as an integrated lens to shape its "field of view", all while

saving space within the main hearing-device body.

1.4 Figure 2C of the opposed patent is the most illustrative drawing as to the present invention's core concept.

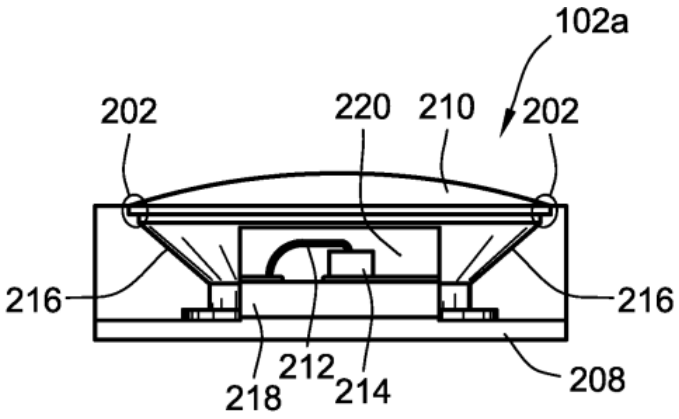

FIG. 2C

It shows the optical transducer, containing a radiating element (214), mounted on a circuit board (208). This assembly sits at the bottom of a cavity (102a) which has slanted sidewalls (216) and a stepped design (202) at its rim. A protective substance (210) has been dispensed into the cavity, filling the space around the transducer and curing to form a solid, outwardly-curved shield that acts as a protective lens. The stepped design (202) is described as helping to contain the liquid substance during manufacturing, thereby supposedly "fostering" the formation of the desired dome shape.

2. *Main request: claim 1 - novelty*

2.1 Concerning the **main request**, the opposition division found in Reasons 13.1 of the appealed decision that document **D1** disclosed all of the **features (a) to (k)**.

2.2 In the written proceedings, the proprietor contested this finding primarily on the basis of the mapping of the "cavity" in accordance with **feature (b)**. It submitted that the "slots 45" and "recess channels 35 to 37" disclosed in the embodiment described in paragraphs [0048] to [0053] of D1 are distinct elements located in *separate* components (i.e. in "inner foam 42" and "outer part 38", respectively) and that a consistent mapping requires selecting only *one* of them.

In that regard, the board notes that the feature mapping adopted in Reasons 13.1 of the appealed decision regarding feature "M1.5.1", i.e. feature (e) in the board's labelling, erroneously equates two distinct structural components of the system in D1. As is apparent from the impugned decision's statement "slots '45' (also denoted as recess channels '35', '36', '37')", the opposition division treated the "slots 45" and the "recess channels 35 to 37" as interchangeable terms for the claimed "cavity". This mapping appears to serve solely to satisfy the spatial requirement of feature (h), i.e. that the "shield" is "*above*" or "*over*" the "cavity". Yet, it is flawed because a "cavity" is naturally defined by its surrounding structural walls. Therefore, the skilled reader would not directly and unambiguously equate solely the "slots 45" shown in D1 with the "cavity" according to feature (e).

Instead, the board finds the feature mapping adopted on page 5 of the opponent's statement of grounds of appeal to be correct: the "cavity" as per features "M1.2" and "M1.5.1", i.e. features (b) and (e), is indeed disclosed in D1 by the composite structure formed by the "recess channel 36" and its underlying "slot 45". This is because paragraphs [0049] and [0053] together

with Figures 5, 7 and 8 of D1 disclose that ear bud 50 is assembled by covering inner foam 42 (containing "slots 45") with "outer part 38" (containing "recess channels 35 to 37"). In the assembled state, "slots 45" and "recess channels 35 to 37" align to define a respective *single* functional space. In each such space, a pair of each of the signal emitters 21 to 23 and detectors 24 to 26 is mounted. Together, they form the "cavity" in accordance with feature (b).

2.3 During the oral proceedings before the board, the proprietor contended that D1 did not disclose **features (h), (j) and (k)**.

The board's analysis in this respect is as follows:

2.3.1 The board notes that the opposition division found feature "M1.6", i.e. **feature (h)**, to be disclosed in view of the "round-top" encapsulation mentioned in paragraph [0053] of D1, which was considered to be "*above*" the "slots 45" shown in Figure 7 of D1. Given that the board adopts a different feature mapping regarding the "cavity" comprised in the claimed "hearing device" (cf. point 2.2 above), this "round-top encapsulation" does not necessarily form a "shield" *over* the "cavity" as required by feature (h).

The proprietor correctly noted that an assessment of novelty requires a *direct and unambiguous* disclosure, pointing out that D1 does not explicitly detail the spatial extent of the respective "encapsulation". Consequently, the board must assess the extent to which the skilled reader would derive the dimensions of this "encapsulation" from the overall disclosure of D1, taking into account, for example, the functional statement "*to avoid injury to the user*" made in

paragraph [0053]. In the board's view, the extent of the "encapsulation" relative to the "cavity" fundamentally depends on the *type* of injury which the skilled reader would seek to prevent. For instance, while protection against mechanical scratching of the user's ear canal may be achieved with only a *partial* filling of the "cavity", protecting the user against inflammation caused by the accumulation of dirt, cerumen or dead-skin particles would necessitate a *completely* filled "cavity". Yet, only in the latter scenario would the "round-top encapsulation" necessarily form a "shield" *over* the "cavity".

The proprietor convincingly argued that, because the "outer part 38" referred to in paragraph [0053] of D1 is interchangeable, the reference to "*avoiding injury to the user*" related specifically to preventing scratches. In particular, the skilled reader is, as the proprietor correctly explained, aware that the respective emitter/detector pairs can have sharp edges and that the "outer part 38" of D1 is made of resilient rubber to increase comfort and protect the emitter/detector pairs. When inserted into the user's ear canal, this resilient "outer part 38" indeed compresses, at which point the unencapsulated emitter/detector pairs could very well scratch the ear-canal wall. Consequently, the proprietor is correct in that, to avoid this scratching, the emitter/detector pairs disclosed in D1 are encapsulated first and that the "outer part 38" is subsequently placed *over* this encapsulated entity. However, neither the appealed decision nor the parties during the appeal proceedings mentioned the "inflammation" scenario. The board therefore agrees with the proprietor that the skilled reader would understand the expression "*to avoid injury to the user*" as referring to injury caused by

mechanical scratching of the user's ear canal. As a result, regarding the disclosure of feature (h) by D1, the board concludes that, since the "cavity" is identified as the combination of the "slots 45" in the inner foam 42 and the "recess channels" in the "outer part 38" (e.g. "recess channel 36"), the pre-cured encapsulation resides *inside* the "cavity" rather than forming a "shield" *over* it. Thus, while the encapsulation provides a "shield" over the "optical transducer" and affects its "field of view", it does not provide a "shield" over the "cavity" itself. Therefore, feature (h) is not entirely disclosed by document D1.

2.3.2 As to **feature (j)**, the board notes that this feature does not require, *per se*, that the "sealing glue" fills the "cavity" in its entirety. If, for instance, the glue is poured from the top when manufacturing the claimed "hearing device", it may solidify before reaching the bottom of the "cavity", depending on its viscosity. Based on the claim wording itself, the skilled reader would therefore not necessarily conclude that the "cavity" must be *completely* filled. Furthermore, there is no such restrictive teaching in the opposed patent itself: while the figures and description may encompass embodiments that are *completely* filled, paragraph [0038] of the patent weakens this requirement by specifying that the substance "*fills in spaces*" (instead of, for instance, "*fills in all of the spaces*"), which does not contradict the natural understanding the skilled reader would derive from the claim wording. Given that the encapsulant, i.e. the "epoxy", referred to in paragraph [0053] of D1 *partially* fills the "cavity", it anticipates at least one technically plausible interpretation of this feature.

2.3.3 As to **feature (k)**, the "encapsulation" mentioned in paragraph [0053] of document D1 possesses a "round-top", i.e. it forms an "*outwardly-curved shield*", at least from the perspective of the encapsulated emitter/detector pair. The proprietor further argued that the definite article "the" grammatically linked feature (k) back to feature (h).

However, this linguistic link does not mean that feature (k) constitutes a further distinguishing feature over document D1. Rather, this document discloses an outwardly-curved encapsulation and the only missing aspect of this linked concept — namely that the "shield" is formed *over* the "cavity" — is already fully accounted for by the board's finding regarding feature (h).

2.4 The board therefore concludes that, overall, document D1 discloses all the features of claim 1 except for the "shield", formed by a "protective substance", being *over* the "cavity" as required by **feature (h)**. Hence, contrary to the opposition division's conclusion drawn in Reasons 13 of the appealed decision, the subject-matter of claim 1 as granted is new over D1 (Article 54 EPC).

3. *Main request: claim 1 - inventive step*

3.1 Concerning claim 1 of the main request, the parties agreed that document **D1** is a suitable starting point to assess inventive step. The board sees no reason to question this. For the reasons set out in point 2.3.1 above, document D1 fails to disclose that the "*protective substance forms a shield over the cavity*" in accordance with feature (h).

3.2 The proprietor did not formulate an objective technical problem in this regard, despite having been invited to do so by the board at the oral proceedings before it. It merely addressed the technical effect that is to be associated with feature (h). While doing so, it particularly referred to paragraph [0021] of the patent specification, arguing in favour of a double technical effect, namely that the "*protective substance forming a shield over the cavity*" as per feature (h) "*seals the cavity* and *acts as an optical lens*".

3.3 For the sake of argument, the board will accept that the technical effects suggested by the proprietor are indeed credibly achieved over the whole scope claimed. The board understands that the technical effect of sealing the "cavity" protects the cavity against influences from the environment (like the dirt, cerumen or dead-skin particles mentioned in point 2.3.1 above), whereas the technical effect of the protective substance acting as an optical lens affects the "field of view" of the optical transducer. Correspondingly, the board formulates the objective technical problem as "*how to effectively protect the cavity in D1 against influences from the environment while simultaneously shaping the field of view of the emitter/detector pairs 21-24, 22-25 and 23-26*".

3.4 Starting from D1 and aiming to solve the objective technical problem, the skilled person would have arrived at feature (h) based on their common general knowledge and without exercising an inventive step, for the reasons set out below.

3.4.1 Although the opponent based its obviousness assessment on a different objective technical problem, its line of argument applies equally to how the skilled person

would have solved the objective technical problem defined by the board in point 3.3 above. In this regard, as the opponent convincingly pointed out during the oral proceedings before the board, document D1 already teaches the two fundamental concepts needed. First, it teaches that the "recess channel 36" can be filled with a transparent medium (i.e. "optical glass") to act as a waveguide and "ameliorate" light detection (cf. paragraph [0049] of D1). Second, it teaches using "epoxy" to encapsulate the respective emitter/detector pairs 21-24, 22-25 and 23-26 and to thereby form a "round-top" (cf. paragraph [0053] of D1).

3.4.2 More particularly, the board observes that, to solve the objective technical problem, the skilled person would have followed, as suggested by the opponent, the hint implied in paragraph [0049] of D1 to provide a waveguide in the "recess channel 36" to increase the amount of light that is detected by the detectors. As also correctly argued by the opponent, the skilled person would have readily substituted the "optical glass" with the optically transparent protective "epoxy" known from paragraph [0053] of D1. Furthermore, the opponent rightly submitted that, in implementing this substitution, the skilled person would have filled the "recess channel 36" with the "epoxy" up to the outer contour shown in Figure 4 of D1 to achieve the desired optical light-guiding and protective effects. As the proprietor acknowledged during the oral proceedings before the board, this creates a "meniscus" due to surface tension. Upon curing, this fluid dynamic phenomenon naturally forms an "outwardly-curved shield" *over* the "cavity" as per feature (h). The resulting curved surface will also unavoidably act as a lens, affecting the "field of view", thereby providing a complete solution to the objective technical problem.

The board notes in passing that filling the "recess channel 36" with "epoxy" *in situ* (rather than pre-curing it) would also avoid the mechanical-assembly conflicts identified by the board in point 5.3.1 of its communication under Article 15(1) RPBA, namely the difficulty of sliding the tight "outer part 38" over protruding, pre-cured sensors. Indeed, pouring the transparent epoxy into the "recess channel 36" *after* the "outer part 38" is fitted eliminates such mechanical-assembly conflicts, given that the liquid epoxy smoothly fills the available space without requiring the tight "outer part 38" to be forcefully stretched over a rigid protrusion.

3.4.3 The proprietor's argument that filling the "cavity" would lock the "outer part 38" and destroy its interchangeability could not convince the board. As the opponent pointed out, document D1 explicitly states in paragraph [0050] that the removable outer piece is an "optional feature". While the proprietor correctly countered that the embodiment disclosed in paragraph [0053] of D1 is silent as to whether the "interchangeability" of the "*interchangeable resilient outer part 38*" is *optional*, the board holds that there is, conversely, no technical requirement in this paragraph rendering such an interchangeability *mandatory*. The proprietor did not submit any arguments to that effect either. The board was therefore persuaded by the opponent's argument that the skilled person would make a trade-off in this regard. Seeking a permanent environmental seal as dictated by the objective technical problem, the skilled person would have routinely sacrificed a non-mandatory interchangeability measure, especially one that has been explicitly presented as being *optional* in the related embodiment of paragraph [0050] of D1. Trading

modularity for a *robust environmental seal* would have constituted a standard engineering compromise already at the effective filing date of the application underlying the opposed patent.

3.5 Hence, the subject-matter of claim 1 as granted does not involve an inventive step (Article 56 EPC). Hence, the ground for opposition under Article 100(a) EPC in conjunction with Article 56 EPC prejudices the maintenance of the patent as granted.

4. *Auxiliary request 1: claim 1 - added matter*

4.1 The board agrees with the finding set out in Reasons 15 of the appealed decision that claim 1 of **auxiliary request 1** contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC). The combination of the broad structural feature (i.e. "*one or more step portions*") with the specific functional effect ("*enabling*" and "*fostering*") as per **feature (l)** constitutes an unallowable intermediate generalisation.

4.2 The proprietor argued that Figure 4 as filed provided the necessary basis in this regard, as it depicted a "dome" retained in a "cavity" with a *single* step.

This argument is not convincing. A schematic 2D drawing such as Figure 4 depicts only a *static* final state; it does not, and cannot, directly and unambiguously disclose the *dynamic* manufacturing process or the specific causal relationship required by the functional terms "*enabling*", "*to remain*" and "*fostering*". Rather, the description as filed discloses this specific functional effect only in the context of the embodiment of Figure 2C (page 11, lines 28 to 32), which

necessitates "*two or more*" steps. As correctly noted by the opponent, the single-step design of Figure 4 as filed may have achieved its final shape through a *different* process than the one described in relation to Figure 2C as filed. Consequently, extracting the functional effect from the specific "two-step" embodiment and applying it to the broader "one-step" structure of Figure 4 creates a technical teaching that is not directly and unambiguously derivable by the skilled reader from the application as filed.

4.3 During the oral proceedings before the board, the proprietor made no further comments in this regard.

4.4 Hence, there is no reason for the board to disagree with the opposition division's finding set out in Reasons 15 of the appealed decision that auxiliary request 1 contravenes Article 123(2) EPC.

5. *Auxiliary request 2: claim 1 - clarity*

5.1 In Reasons 18 of the appealed decision, the opposition division concluded that claim 1 of **auxiliary request 2** was allowable under Article 84 EPC.

The board does not endorse this conclusion, for the following reasons.

5.1.1 Defining an apparatus by a manufacturing result (see the terms "*enabling*" and "*fostering*" as well as the expression "*during manufacturing*" in **feature (m)**) is only allowable under Article 84 EPC if it provides clear, unmistakable boundaries for the skilled reader.

5.1.2 During the oral proceedings before the board, the proprietor argued that claim 1 imposes clear structural

limitations in the form of a "stepped portion", of a "dome" being present around the "cavity" and of the "protective substance" being limited by the "cavity". It emphasised that, by virtue of the terms "*remain*" and "*fostering*", claim 1 required the "dome" to be created "*during manufacturing*", culminating in these structural limitations of the "dome" around the "cavity". Furthermore, the proprietor argued that the "stepped design" prevented spill-over: in very small hearing devices with straight sidewalls, it was easy to add too much glue, causing it to spill over to other components.

The board understands the proprietor's defence in this regard to be hinged on a binary outcome: either the glue is kept inside the cavity and forms a dome or it spills over and the dome is destroyed.

5.1.3 The opponent, however, convincingly demonstrated that the physical behaviour of fluids does not operate in such binary terms. Specifically, the opponent provided an example involving a highly viscous "sealing glue". If such a glue fills the "cavity" to its edge, surface tension naturally forms a "dome". If a slight excess of glue is applied — for instance, spilling over by just a few drops — the "dome" does not immediately flatten or collapse. Instead, while the "meniscus" may flatten slightly, the fluid itself maintains a convex, dome-like shape due to its surface tension.

The board agrees with the opponent's arguments particularly in that a highly viscous potting compound can indeed easily spill over the edge slightly while still maintaining a "convex meniscus" due to surface tension. This highlights that the exact mechanism of "*fostering*", as referred to in claim 1, is extremely

vague. Because claim 1 does not define *how* the "stepped design" actually achieves this "*fostering*", a skilled reader could not definitively determine from this claim whether or not a certain device design falls within the scope of protection sought. For example, if the skilled reader envisages using "steps" at the bottom of the "cavity" — a position not excluded by the explicit structural requirements of claim 1 — and using straight walls above, relying entirely on fluid viscosity to form the "dome", it remains unclear whether the end result falls within the scope of claim 1. In other words, the functional language introduced by the terms "*to remain*" and "*fostering*" leaves the boundaries of the subject-matter for which protection is sought entirely blurred to the skilled reader.

5.1.4 The proprietor also explained how the "stepped design" prevented glue from spilling over, arguing that when the glue reaches the end of the "stepped design" and flows over the first step, it serves as a visual clue for the operator to pour the glue more carefully, thereby keeping the glue inside the "cavity".

However, as set out in point 5.1.1 above, claim 1 is an *apparatus* claim defining a final physical product and not a *method* claim defining a manufacturing process. A "visual clue" for a factory worker pouring glue is however a transient manufacturing aid. It does not impart, by itself, any distinct, verifiable structural limitations on the final, cured "hearing device". Therefore, this argument cannot save claim 1 from a clarity objection.

5.1.5 Moreover, the opponent is also right that claim 1 does not specify *where* the "stepped design" mentioned in feature (m) is located. The proprietor argued that

because the location of the "dome" is known (i.e. *over* the "cavity"), the term "*fostering*" implicitly restricted the "stepped design" to the top of the "cavity". However, because the mechanism of "*fostering*" is so vague (cf. point 5.1.3 above), the causal link between the steps of the "stepped design" according to feature (m) and the "*dome around the cavity*" mentioned in that feature is broken. Without a clear structural definition placing the steps at the outer rim, claim 1 may very well cover steps located anywhere in the side wall. This also renders claim 1 unclear to the skilled reader.

5.2 Hence, the board judges that auxiliary request 2 is, at least, not allowable under Article 84 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

B. Brückner K. Bengi-Akyürek

Decision electronically authenticated